

REPRESENTATIVE FOR PETITIONER:

Milton Brown, Jr., Chief Operating Officer, Early Childhood Crime Prevention

REPRESENTATIVE FOR RESPONDENT:

Frank Agostino, St. Joseph County Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

EARLY CHILDHOOD)	Petition No.: 71-026-08-2-8-00001
CRIME PREVENTION, ¹)	
)	Parcel No.: 18-2149-5545
Petitioner,)	
)	
v.)	
)	
ST. JOSEPH COUNTY)	County: St. Joseph
ASSESSOR,)	
)	Township: Portage
Respondent.)	
)	
)	Assessment Year: 2008 ²

Appeal from the Final Determination of
St. Joseph County Property Tax Assessment Board of Appeals

October 20, 2009

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:

¹ There is some question about who the petitioner is in this case. The St. Joseph County PTABOA’s Notice of Action on Exemption Application lists Early Childhood Crime Prevention as the property owner. *Board Ex. A.* The Form 131 petition alternately lists the owners as Early Childhood and as Milton Brown, Sr., Felix Brown, and Betty Thomas. *Id.* As discussed in the body of this determination, Milton Brown, Jr. offered confusing testimony about who actually owned the property.

² The Form 131 application refers to 2007 and 2008. At the hearing, however, Milton Brown, Jr. agreed that he had filed the application too late to obtain an exemption for 2007. *Brown testimony.*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. The undisputed evidence in this case shows that the subject property was owned, occupied, and solely used for a charitable purpose—to provide emergency shelter and other services to members of the community. The facts that unity in ownership and occupancy may have been lacking or that people or entities other than not-for-profit organizations may have owned the property do not change that conclusion. The subject property is therefore entitled to an exemption.

Background and Procedural History

2. On January 8, 2008, Milton Brown, Jr., on behalf of Early Childhood, Milton Brown, Sr., Felix Brown, and Betty Thomas, filed a Form 136 Application for Property Tax Exemption.³ In that application, Mr. Brown requested a 100% property tax exemption for the subject property. On January 9, 2009, the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination that the property was 100% taxable. Six days later, Early Childhood responded by filing a Form 132 Petition for Review of Exemption. The Board has jurisdiction over Early Childhood’s appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.
3. On June 18, 2009, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in at the hearing:

For Early Childhood:

Milton Brown, Jr.

³ St. Joseph County date stamped the application January 8, 2007. At hearing, however, the parties agreed that the actual filing date was January 8, 2008.

For the St. Joseph County Assessor:

Mr. David Wesolowski, St. Joseph County Assessor,
Kevin Klaybor, St. Joseph County PTABOA,
Ross Portolese, St. Joseph County PTABOA,
Ralph Wolfe, St. Joseph County PTABOA

5. The parties submitted the following exhibits:

For Early Childhood:

- Petitioner Exhibit 1 – Untitled document discussing the test for determining charitable use,
- Petitioner Exhibit 2 – Documents (4 pages) with information about O’Brien Street Northside 24hr Community Development Transitional Residence and Early Childhood Development,
- Petitioner Exhibit 3 – Letter from IRS dated August 29, 2002,
- Petitioner Exhibit 4 – Letter from IRS dated May 27, 2005.

For the Assessor:

Respondent Exhibit 1 – Form 136 application

6. The Board recognizes the following additional items as part of the record of proceedings:

- Board Exhibit A – Form 132 petition,
- Board Exhibit B – Notice of hearing, dated April 13, 2009,
- Board Exhibit C – Exemption Hearing Order,
- Board Exhibit D – Hearing sign-in sheet.

7. The subject property is located at 1637 North O’Brien in South Bend. Neither the Board nor the ALJ inspected the property.

Findings of Fact

8. Early Childhood is a not-for-profit entity that is classified as exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code. *See Brown testimony; Pet’r Exs. 3-4.* Early Childhood uses the subject property to operate O’Brien Street 24hr. Transitional Residence, where it offers a number of services to members of the community. Those services include providing emergency shelter, free telephone calls, coffee and snacks, exercise equipment, cooking appliances, and television and radio. *Brown testimony; Pet’r Ex. 2.* Early Childhood also offers crime-prevention tips and

refers people to various community organizations. *Id.* There is no evidence that the subject property is used for any other purpose.

9. The record, however, does not clearly show who owned the subject property on the March 1, 2008, assessment date or the precise date that Early Childhood began to operate a transitional residence there. Milton Brown, Jr. testified that the property had been owned by his father, Milton Brown, Sr., his grandfather, Felix Brown, and his aunt, Betty Thomas. *Brown testimony.* Mr. Brown, however, did not explain whether his father, grandfather, and aunt held the property as joint tenants or tenants in common. In any event, Mr. Brown's father and aunt died in 2005, and his grandfather died in 2007. *Id.* Mr. Brown was unclear about what happened to the property after that. At one point, Mr. Brown testified that he had been named the head of his grandfather's estate, and in that capacity, he had turned the property over to Early Childhood, although title to the property was still tied up in probate. *Brown testimony.* At another point, though, Mr. Brown testified that the property had been sold at tax sale and that "the company" (presumably Early Childhood) had helped him buy it back, after which he took possession and used the property for community service. *Id.*
10. In any event, Milton Brown, Jr. filed the Form 136 exemption application on January 8, 2008. *Resp't Ex. 1.* In that application, Mr. Brown certified under the penalties of perjury that Early Childhood occupied and used the property to provide many of the same services that it currently provides. *See id.* Thus, regardless of who owned the property, Early Childhood occupied and used it as of the March 1, 2008, assessment date under appeal. And, even if others owned the property, Early Childhood did not pay any rent for occupying and using it. *Brown testimony.*

Conclusions of Law and Analysis

11. A taxpayer seeking an exemption bears the burden of proving that its property qualifies for exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). In its Form 132 petition, Early Childhood sought

an exemption under Ind. Code § 6-1.1-10-16 on grounds that the subject property was owned, occupied and used for charitable purposes.

12. Indiana Code § 6-1.1-10-16 exempts buildings and the land that they are situated on if those buildings are owned, occupied, and predominately used for educational, literary, scientific, religious, or charitable purposes. *See* Ind. Code § 6-1.1-10-16(a)-(c); Ind. Code § 6-1.1-10-36.3. The exact meaning of the statute and its predecessors has spawned a significant amount of litigation. But broadly speaking, courts have linked a property's right to exemption to the property being used to provide a public benefit. *See, e.g., Fort Wayne Sports Club, Inc. v. State Bd. of Tax Comm'rs*, 147 Ind. App. 129, 258 N.E.2d 874, 881(1970)("In our view, the well-established and obvious purpose for legislative conferral of tax exemptions requires a showing of some public benefit as a condition precedent to the granting of such exemption.").
13. Early Childhood offered undisputed evidence to show that it operated the subject property for the public's benefit. In fact, the Assessor conceded that Early Childhood occupied and used the property for charitable purposes. *See Agostino statement* ("The use of the property appears to be for charitable purposes; it appears to be occupied for charitable purposes . . ."). The Assessor, however, claimed that, in order to qualify for exemption, a property must be owned by a not-for-profit entity. Thus, the Assessor argued that the subject property did not qualify for exemption because it was owned by Mr. Brown's relatives or their estates rather than by Early Childhood.
14. Even if Early Childhood did not own the property—an open question given the state of the record—the Assessor misunderstands the law. While a taxpayer must prove that its property qualifies for exemption, it need not show a unity of ownership and occupancy. *Sangrlea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 955 (Ind. Tax Ct. 1997). Instead, the taxpayer must offer probative evidence to show that "its property is owned for exempt purposes, occupied for exempt purposes, and predominately used for exempt purposes." *Oaken Bucket Partners, LLC v. Hamilton County Property Tax Assessment Bd. of Appeals*, 909 N.E.2d 1129, 1134 (Ind. Tax Ct. 2009) *affirmed on reh'g* 2009 Ind. Tax LEXIS 34 (2009). "Once these three elements have been met, *regardless*

of by whom, the property can be exempt from taxation.” Id. (quoting Sangralea Boys Fund, 686 N.E.2d at 955) (emphasis in original). And the mere fact that the property’s owner is organized for profit does not disqualify the property from exemption; a property’s entitlement to exemption instead “turns on the character of the property, not the character of its owner.” Id. at 1135 (emphasis in original).

15. In *Oaken Bucket*, the Indiana Tax Court reversed the Board’s final determination denying an exemption for the portion of a commercial building leased by a church. The parties did not dispute that the church occupied the premises for an exempt purpose, but the Hamilton County PTABOA claimed that the taxpayer owned and used the property for investment and profit. *Id.* at 1132 n.4. The court, however, found evidence that the property was owned for a charitable purpose in the fact that the taxpayer charged below-market rent to the church, thereby simultaneously providing both private and public benefits. *Id.* at 1137.
16. Here, the Assessor did not dispute that Early Childhood occupied and used the subject property for charitable purposes. And the Assessor did not claim that Mr. Brown’s relatives or their estates owned the subject property for any reason other than to allow Early Childhood to operate its transitional-care residence. In fact, Early Childhood did not pay any rent for using the property, making this an even stronger case for exemption than *Oaken Bucket*, where the church paid at least some rent for space situated in an otherwise commercial building. Thus, because Early Childhood offered un-contradicted evidence to show that the subject property was owned, occupied, and solely used for charitable purposes, that property qualified for a 100% property tax exemption.

Summary of Final Determination

17. For the reasons set forth, the Board concludes that the subject property is entitled to a 100% property tax exemption for the March 1, 2008, assessment date.

This Final Determination of the above captioned matter is issued 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>>