

REPRESENTATIVE FOR PETITIONER:

J.C. Settlemoir, Pastor

REPRESENTATIVES FOR RESPONDENT:

Lisa Garoffolo, Assessor

Jennifer S. Lasley, Deputy Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

New Testament Baptist Church,	)	Petition No.: 06-019-18-2-8-00995-18
	)	
Petitioner,	)	
	)	Parcel Nos.: 118-21362-00
v.	)	018-00000-04
	)	
Boone County Assessor,	)	County: Boone
	)	
Respondent.	)	Assessment Year: 2018
	)	

**June 18, 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. New Testament Baptist Church appealed the denial of its exemption application. The Boone County Assessor agrees that the Church used the subject property for religious purposes. But she believes that the exemption application was properly denied because the Church failed to provide a document with the Secretary of State’s seal showing that it was not organized for profit. The statute under which the Church claimed an exemption does not require property to be owned or used by a not-for-profit entity, and the Church

substantially complied with the relevant application requirements. We therefore find that the Church was entitled to an exemption for the property.

### **PROCEDURAL HISTORY**

2. The Church filed a Form 136 application seeking a religious-purposes exemption of its real and personal property under Ind. Code § 6-1.1-10-16. On August 8, 2018, the Boone County Property Tax Assessment Board of Appeals (“PTABOA”) issued its Form 120 determination denying the application. The Church responded by timely filing a Form 132 petition with us.
  
3. On March 20, 2019, our designated administrative law judge, Jeremy Owens (“ALJ”), held a hearing on the Church’s petition. Neither he nor the Board inspected the property. The following people testified at the hearing: J.C. Settlemoir, the Church’s pastor; Boone County Assessor Lisa Garoffolo; and Jennifer Lasley, her deputy assessor.
  
4. The parties offered the following exhibits without objection:

Petitioner’s Exhibit 1:	Church minutes from January 20, 2008
Petitioner’s Exhibit 2:	Articles of Faith
Petitioner’s Exhibit 3:	By-laws
Petitioner’s Exhibit 4:	Bank statements with copies of check ledgers
Petitioner’s Exhibit 5:	Summary of Expenses
Petitioner’s Exhibit 6:	Summary of Sermonaudio downloads
Petitioner’s Exhibit 7:	Photographs
Respondent’s Exhibit 1:	Assessor Form 136 Checklist
Respondent’s Exhibit 2:	From 136 application
Respondent’s Exhibit 3:	Church minutes from January 20, 2008
Respondent’s Exhibit 4:	Bank statements with copies of check ledgers and acknowledgments of monetary offerings
Respondent’s Exhibit 5:	Form 120 determination
Respondent’s Exhibit 6:	August 16, 2018 email from Lasley to Settlemoir
Respondent’s Exhibit 7:	Form 132 petition
Respondent’s Exhibit 8:	IBTR hearing notice
Respondent’s Exhibit 9:	Property record card for the subject property

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

## CONTENTIONS

### A. The Church's contentions

6. As recorded in a handwritten document identified as "minutes," the Church was formed on June 20, 2008, when a group of baptized believers met at Elder J.C. Settlemoir's home for purposes of constituting a church. It does not appear that the Church filed any organizational documents with the Secretary of State. Its by-laws provide that the Church is the "assembly" and that the assembly is constituted for "the glory of God and of the Lord Jesus Christ." The by-laws have provisions regarding who may be admitted to, and excluded from, the assembly as well as the process for doing so. They also make the pastor, who is elected by a majority vote of the assembly, the assembly's "overseer." *Pet'r Exs 1, 3.*
7. The property is located at 301 Linville Avenue in Whitestown. The Church uses it to preach the gospel. The Church completed the application form (Form 136) prescribed by the Department of Local Government Finance ("DLGF"). It supplied the June 20, 2008 minutes with its application. It also provided statements from its bank showing deposits, withdrawals, and a running balance. Copies of check ledgers and acknowledgments of offerings received by the Church were interspersed with those bank statements. Although it is unclear whether the Church attached the bank statements and related documents to its exemption application, the PTABOA had them before it when it made its determination. *Resp't Exs. 1-4; Settlemoir testimony; see also Garoffolo and Lasley testimony.*

**B. The Assessor's contentions**

8. The Assessor agrees that the property meets the requirements for an exemption, but argues that the Church failed to provide the necessary paperwork when it applied. She believes the Church has now provided everything except a document from the Secretary of State showing that the Church is a not-for-profit organization. Her deputy assessor, Jennifer Lasley, confirmed with a DLGF representative that the PTABOA needed the missing document in order to grant the Church an exemption. *Resp't Ex. 6; Garoffolo and Lasley testimony.*

**ANALYSIS**

9. The legislature has provided an exemption for all or part of a building that is owned, occupied, and predominantly used for religious purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c). That exemption generally extends to land on which an exempt building is situated and personal property contained therein. *See Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cnty. Ass'r*, 909 N.E.2d 1138, 1141 *reh'g den.* 914 N.E.2d 13 (Ind. Tax Ct. 2009); I.C. § 6-1.1-10-16(c), (e).
10. While not very detailed, the undisputed evidence shows that the subject property is owned, occupied, and predominantly used for religious purposes. Indeed, the Assessor agrees that the subject property qualifies for an exemption. But she argues that the Church did not provide the documents required for the PTABOA to grant one. We disagree.
11. Exemption is a privilege that a taxpayer may waive by failing to comply with the statutory procedures for obtaining it. I.C. § 6-1.1-11-1. A taxpayer's application must include several things:
- An exemption application which is required under this chapter shall contain the following information:
    - (1) A description of the property claimed to be exempt in sufficient detail to afford identification.

(2) A statement showing the ownership, possession, and use of the property.

(3) The grounds for claiming the exemption.

(4) The full name and address of the applicant.

(5) For the year that ends on the assessment date of the property, identification of:

(A) each part of the property used or occupied; and

(B) each part of the property not used or occupied;

for one (1) or more exempt purposes under IC 6-1.1-10 during the time the property is used or occupied.

(6) Any additional information which the department of local government finance may require.

I.C. § 6-1.1-11-3(c). The prescribed application form asks taxpayers to indicate they have provided articles of incorporation, bylaws and the following financial statements for the previous three years: balance sheets and a summary of income and expenditures. *See Resp't Ex. 2.*

12. The Church substantially complied with the statutory application requirements. It adequately described the property and explained how the property was used for exempt purposes. It is unclear whether the Church was formally organized as a corporation or other entity under Indiana law, and consequently, whether it has articles of incorporation or bylaws in the technical sense. But it did provide handwritten minutes describing its formation. Similarly, while the Church did not provide the precise types of financial documents the application form requests, it did provide banking records showing deposits, including monetary offerings it received, and various expenditures.<sup>1</sup>
13. In any case, the Assessor does not claim that the Church's financial information was insufficient. Instead, she asserts that the Church needed to provide something from the Secretary of State showing it is a not-for-profit organization. But a taxpayer need not be

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<sup>1</sup> The statute also requires an applicant to file a copy of the assessor's record kept under Ind. Code § 6-1.1-4-25(a) showing the calculation of the assessment for any real estate claimed as exempt. I.C. § 6-1.1-3(e). If the applicant fails to file that record, the county assessor must notify it in writing of the requirement. The applicant then has 30 days to comply. If it fails to do so, the county PTABOA must deny the application. I.C. § 6-1.1-3(f). It is unclear whether the Church filed a copy of the record under Ind. Code § 6-1.1-4-25(a). But the Assessor does not claim that the exemption should be denied based on the Church's failure to comply with that requirement, and there is nothing in the record to show the Assessor notified the Church of the requirement.

organized as a not-for-profit entity to receive an exemption under Ind. Code § 6-1.1-10-16(a). To the contrary, the statute’s “clear and unambiguous” language “does not differentiate between entities that are not-for-profit and entities that operate for profit.” *College Corner, L.P. v. Dep’t of Loc. Gov’t Fin.*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006).<sup>2</sup> So the failure to include such a document with its application did not disqualify the Church from receiving an exemption.

### **FINAL DETERMINATION**

14. Contrary to the Assessor’s belief, a property owner need not be organized not-for-profit, much less provide a document from the Secretary of State showing that fact in order for its property to qualify for an exemption. We therefore find that the subject property is entitled to a 100% exemption.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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<sup>2</sup> Regardless of how (or if) the Church is formally organized, there is no evidence that it had any profit motive in owning or using the subject property.

**- 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>>.