

REPRESENTATIVE FOR PETITIONER: Benjamin Leonard-White, Board Member & Treasurer, Pro Se

REPRESENTATIVE FOR RESPONDENT: Robert Schwerd, Esq., Schwerd, Fryman, & Torrenga, LLP.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Regional Performing Arts Company,)	Petition:	64-016-20-2-8-00639-20
)		
Petitioner,)	Parcel:	64-05-13-126-006.000-016
)		
v.)	County:	Porter
)		
Porter County Assessor,)	Assessment Year:	2020
)		
Respondent.)		

July ~~28~~ 2021

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and after considering the issues, now finds and concludes as follows:

INTRODUCTION

1. The Regional Performing Arts Company (“RPAC”) applied for a 2020 exemption for a property it purchased on contract. Because it failed to show the property was predominantly used for exempt purposes in the year preceding the assessment date, we find the property to be 100% taxable.

PROCEDURAL HISTORY

2. RPAC sought an exemption for a property located at 2530 Portage Mall in Portage, Indiana. The Porter County Property Tax Assessment Board of Appeals (“PTABOA”)

found the property to be 100% taxable. RPAC timely appealed to the Board. The Board's appointed administrative law judge, Jennifer Thuma ("ALJ") held a telephonic hearing on May 6, 2021.

3. Treasurer and Board Member Benjamin Leonard-White, represented RPAC pro se, and Attorney Robert Schwerd represented Porter County Assessor Jon Snyder. Mr. Leonard-White, Mr. Snyder and Deputy Assessor Cathy Meyer were sworn as witnesses.

RECORD

4. The record consists of the following:

Petitioner's Exhibit 1:	Form 136 Application for Exemption
Petitioner's Exhibit 2:	Form 120 Denial of Exemption
Petitioner's Exhibit 3:	Contract for Purchase of Property
Petitioner's Exhibit 4:	Affidavit—Seller of Property, Brandon Starr
Petitioner's Exhibit 5:	Drawing of Space Usage
Petitioner's Exhibit 6:	Photograph of space
Petitioner's Exhibit 7:	Court of Appeals Decision, <i>Henderson v. Henderson</i> , 139 N.E. 3d 227 (Ind. App. Ct. 2019)
Petitioner's Exhibit 8:	Non-profit Formation Documents
Petitioner's Exhibit 9:	Property Purchase Records
Petitioner's Exhibit 10:	DLGF Presentation (One Page) & copy of Ind. Code § 6-1.1-1-9 et. seq.
Petitioner's Exhibit 11:	Property Record Card, 2020 Property Tax Bill for North Coast Cultural Association in Chesterton, Recorded Mortgage for North Coast
Petitioner's Exhibit 12:	2020 Property Tax Bill for Regional Performing Arts Company
Respondent's Exhibit A:	Form 136 Application for exemption
Respondent's Exhibit B:	Form 120 Denial of Exemption
Respondent's Exhibit C:	Contract for Sale of Property
Respondent's Exhibit D:	Copy of Indiana Code § 6-1.1-10-41

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

OBJECTIONS

6. The Assessor objected to questions to Ms. Meyer regarding whether the property record card provided evidence of ownership, or whether the contract for purchase provided the requisite proof. He contended that these questions called for legal conclusions. We agree and sustain the objection.
7. RPAC objected to Respondent's Ex. D on the grounds that the Assessor failed to include the entire Indiana Code citation section. It provided no legal basis for why this fact merits the exhibit's exclusion. We overrule the objection and admit the exhibit.

FINDINGS OF FACT

8. RPAC, an Indiana nonprofit corporation, purchased the subject property on contract from Portage Custom Wear, LLC for a total purchase price of \$60,000 to be paid in installments. The contract was signed on December 27, 2019. It requires that RPAC make monthly payments until it pays the full purchase price. It also provides that if RPAC defaults it will lose any interest in the property. Once the parties close on the property, Portage will transfer legal title through a warranty deed to RPAC. While RPAC makes payments, it is responsible for all taxes and assessments. It has no right to transfer or assign the contract rights without written consent from Portage. RPAC undertook a renovation project in the spring of 2020, and as of October 14 of that year, it was using the subject property as a theatre.¹ *Pet'r. Exs. 3-8; Resp't. Ex. C; Leonard-White testimony.*

CONCLUSIONS OF LAW

9. 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

¹ RPAC offered little evidence regarding when it began using the property after purchase. According to Leonard-White, the drawing and photographs RPAC submitted show the "current" use of the space. The photographs are dated October 14, so we conclude that the subject property was used as a theatre at least by that date. *Pet'r Exs 4, 5; Leonard-White testimony.*

(Ind. 2010). A taxpayer bears the burden of proving it is entitled to an exemption. *Oaken Bucket*, 938 N.E.2d at 657. Exemption statutes are strictly construed against the taxpayer. Every exemption case “stand[s] on its own facts,” and it is the Petitioner’s duty to walk the Board through the analysis. *Id.* Ind. Code § 6-1.1-10-16(a) provides an exemption for all or part of a building that is owned and exclusively or predominately used and occupied for educational, literary, scientific, religious, or charitable purposes. In addition, Ind. Code § 6-1.1-10-18 provides an exemption for property used for the fine arts.

10. The determination of whether a property should receive an exemption “for a particular assessment date must be based on the tangible property’s eligibility...on that assessment date.” Ind. Code § 6-1.1-11-1.5(b). The assessment date for 2020 was January 1, 2020. Ind. Code § 6-1.1-2-1.5(a)(2). In addition, Ind. Code § 6-1.1-10-36.3 provides that in order to qualify for an exemption a property must be predominantly used for exempt purposes in the year preceding the assessment date.

11. The parties focused their arguments and evidentiary presentations on whether an entity purchasing a property on contract can receive an exemption, but we find for the Assessor on other grounds. RPAC signed the contract to purchase the subject property on December 27, 2019—five days before the 2020 assessment date of January 1. It offered no evidence showing how it used the property in those five days, nor how the property was used for the preceding 360 days. It is conceivable that the property was used for exempt purposes for those five days while being vacant or used for other exempt purposes for the rest of the year, but we do not find it likely. As discussed above, exemption statutes are strictly construed against the taxpayer. If that were the case, RPAC should have provided clear evidence showing that it met the predominant use test even though it only purchased the property five days before the assessment date. Without such a showing, the preponderance of the evidence demonstrates that the subject property was not predominantly used for exempt purposes in the year preceding the assessment date as required by Ind. Code § 6-1.1-10-36.3, and thus, not eligible for an exemption.

CONCLUSION

In accordance with the above findings of fact and conclusions of law we find the subject property is 100% taxable for the 2020 assessment year.

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>.