

REPRESENTATIVE FOR PETITIONER:
Regina Villela, Secretary/Treasurer

REPRESENTATIVE FOR RESPONDENT:
Beth H. Henkel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Servants of the Streets FWTC, Inc.,)	Petition: 20-009-10-2-8-00001
)	
Petitioner,)	
)	Parcel: 20-06-08-376-007.000-012 ¹
v.)	
)	
Elkhart County Assessor,)	
)	Assessment Year: 2010
Respondent)	

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

February 26, 2013

FINAL DETERMINATION

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ The Petitioner identified a different parcel number, 20-06-08-376-008.000-012, on the From 132. However, the parties agreed the property under appeal, 809 West Wolf Avenue, is properly identified as 20-06-08-376-007.000-012.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the Petitioner's real property should be exempt from taxation in 2010 despite the fact that the Petitioner failed to timely file its application.

PROCEDURAL HISTORY

2. On June 4, 2010, the Petitioner, Servants of the Streets FWTC, Inc. (Servants of the Streets), filed an Application for Property Tax Exemption (Form 136). On July 2, 2010, the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued the Notice of Action on Exemption Application (Form 120) denying the Petitioner's application. On August 16, 2010, the Petitioner filed a Form 132 Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4, Ellen Yuhan, the duly designated Administrative Law Judge (ALJ) appointed by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on December 5, 2012, in Goshen, Indiana.

4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Regina Villela, Secretary/Treasurer, Servants of the Streets

For the Respondent:

Cathy Searcy, Elkhart County Assessor

5. The Petitioner's representative requested the attachments to the Form 132, including the Form 132, the Form 120, the Form 136, the Petitioner's By-Laws, the Petitioner's Profit and Loss Statement for October 2009 through December 2009, the Petitioner's Expenses by Vendor Summary for October 1 2009 through December 15, 2009, the Petitioner's 2009 Budget Recommendations, the Contract for Sale of Real Estate, the quitclaim deed, and the fall installment of the 2012 tax statement, be considered as evidence.
6. The Respondent presented the following exhibit:
Respondent Exhibit 6 – Memorandum of law.
7. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
Board Exhibit A – Form 132 Petition with attachments,
Board Exhibit B – Notice of Hearing-Reschedule, dated September 24, 2012,
Board Exhibit C – Hearing sign-in sheet.
8. The subject property is a house located at 809 West Wolf Avenue, Elkhart, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2010, the PTABOA determined the property to be 100% taxable.
11. For 2010, the Petitioner contends the real property should be 100% exempt.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board of Tax Review is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals

are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

BASIS OF EXEMPTION AND BURDEN

13. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
14. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property owner would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
15. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
16. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

PETITIONER'S CONTENTIONS

17. The Petitioner contends that its real property is eligible for 100% exemption pursuant to Indiana Code § 6-1.1-10-16, because the property was owned, occupied and used for religious and charitable purposes in 2010.

18. The Petitioner presented the following evidence in regard to this issue:
 - A. The Petitioner's representative testified that one of the Petitioner's partners, Dr. Byler, purchased the subject property for Servants of the Streets and sold it back to the Petitioner on a land contract. *Villela testimony; Attachment to Board Exhibit A.* Dr. Byler never lived in the property. *Villela testimony.* Ms. Villela contends that when Servants of the Streets began the exemption process it was told it did not qualify because the property was not in the organization's name. *Id.* Thus, Ms. Villela testified, Dr. Byler executed a quitclaim deed transferring the property to Servants of the Streets on June 4, 2010. *Id.*

 - B. The Petitioner's representative further contends that the subject property should be exempt because it is an extension of the organization's operation at 803 West Wolf, which is 100% tax exempt. *Villela testimony.* According to Ms. Villela, the appealed property should be grandfathered in or just considered as part of the other property's exemption. *Id.* Ms. Villela acknowledged that the Petitioner's application for exemption was untimely, but she requested some concession or consideration for the organization's work in the community. *Id.*

 - C. Finally, Ms. Villela argues that the Petitioner paid more than \$5,000 for the back taxes on the property. *Villela testimony.* According to Ms. Villela, this a lot of money for such a small organization. *Id.*

RESPONDENT'S CONTENTIONS

19. The Respondent contends that the Petitioner's property is not eligible for exemption because the Petitioner failed to timely file its application for exemption as required by Indiana Code § 6-1.1-11-3. *Henkel argument*. According to Ms. Henkel, by statute, in order to receive an exemption for a property that does not have a current exemption, the application must be filed annually on or before May 15th. *Id.* Ms. Henkel argues the Petitioner did not file the application until June 4, 2010, and the Board, therefore, should deny the Petitioner's exemption request. *Id.*

ANALYSIS OF THE ISSUE

20. The Respondent did not dispute that the Petitioner's property was used for religious and charitable purposes. Ms. Henkel merely argued that the Petitioner failed to timely file its application in 2010 and therefore the Petitioner waived its right to an exemption on its property.
21. Indiana Code § 6-1.1-11-3(a) states that "an owner of tangible property who wishes to obtain an exemption from property taxation shall 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. The application must be filed annually on or before May 15 on forms prescribed by the department of local government finance." An application for exemption, however, is not required if the property is used for religious purposes where an application for exemption "was filed properly at least once for a religious use ..." Indiana Code § 6-1.1-11-4.

22. But an exemption is a privilege that may be waived by a person who would otherwise qualify for it. Indiana Code § 6-1.1-11-1. “If the exemption is waived, the property is subject to taxation.” *Id.* Thus, if a property owner does not comply with the statutory procedures for obtaining an exemption, the exemption is waived and the property is taxable. *See Kentron, Inc. v. State Bd. of Tax Comm’rs*, 572 N.E.2d 1366 (Ind. Tax Ct. 1991) (“Kentron was required to comply with the statutory procedures set forth in IC 6-1.1-10-31 and IC 6-1.1-11-1 to receive the exemption provided under IC 6-1.1-10-30(b). Failing to comply, Kentron has waived the exemption privilege as a matter of law.”).
23. The facts of this case are not in dispute. The Petitioner filed its Form 136 application for the 2010 tax year on June 4, 2010 – which is approximately three weeks past the filing date specified in Indiana Code § 6-1.1-11-3(a). Indeed, Ms. Villela admitted that the Petitioner did not timely file its Form 136 application. The Petitioner presented no evidence that it previously received an exemption on the subject property. Ms. Villela merely asked the Board to “give some consideration” and find a way to waive the filing deadline. But she cited no authority that would allow the Board to simply ignore the statutory requirements cited in Indiana Code § 6-1.1-11.
24. Thus, while there is no dispute that the Petitioner’s property was used for charitable and religious purposes, the Board must nonetheless find that the Petitioner waived its right to an exemption on the subject property. The Board, therefore, denies the Petitioner’s claim for an exemption and finds that the subject property is 100% taxable for the March 1, 2010, assessment.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board denies the Petitioner’s claim for exemption and holds that the subject property is 100% taxable for the 2010 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, 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>.