

REPRESENTATIVE FOR PETITIONER: William Ramsey, Barrett & McNagny, LLP

REPRESENTATIVE FOR RESPONDENT: Susan Engelberth, Kosciusko County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Warsaw Land Development, LLC &	)	Petitions:	43-016-20-2-8-00510-20
GK Warsaw Childcare Corp.	)		43-016-20-2-8-00511-20
	)		43-016-20-2-8-00512-20
Petitioners,	)		
	)	Parcel:	43-07-33-300-035.000-041
v.	)		43-07-33-300-036.000-041
	)		43-028-220231-20
	)		
Kosciusko County Assessor,	)	County:	Kosciusko
	)		
Respondent.	)	Assessment Year:	2020

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July 16, 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. Warsaw Land Development LLC (“WLD”) and GK Warsaw Childcare Corporation (“GK”) applied for an educational exemption for real and personal property used for a for-profit early childhood educational facility. Indiana Code § 6-1.1-10-46 requires that for-profit early childhood educational facilities must be owned by the educational provider to qualify for an exemption. Because the owner and educational provider in this appeal are not the same entity, the property does not qualify for an exemption.

**PROCEDURAL HISTORY**

2. The Petitioners applied for an educational exemption for the 2020 assessment year for real and personal property located at 202, 298 and 310 East 200 North in Warsaw. The

Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) found the property to be 100% taxable. The Petitioners timely appealed to the Board.

3. The Board’s Administrative Law Judge, Jennifer Thuma (“ALJ”), held a telephonic hearing on April 8, 2021. The Kosciusko County Assessor, Susan Engelberth, PTABOA Coordinator Kim Carson, GK Management Corporation Chief Financial Officer Sandra Harvey, and Area Director Beth Lovelady were sworn as witnesses.

**RECORD**

4. The record consists of the following:

Petitioner’s Exhibit 1:	Property Tax Exemption Application
Petitioner’s Exhibit 2:	Property Tax Exemption Narrative
Petitioner’s Exhibit 3:	Certificate of Organization-Secretary of State
Petitioner’s Exhibit 4:	Operating Agreement
Petitioner’s Exhibit 5:	Level 3 Pathway Certificate
Petitioner’s Exhibit 6:	Facility Lease
Petitioner’s Exhibit 7:	Enrollment Roster
Petitioner’s Exhibit 8:	Growing Kids Summary Income Statement 2019
Petitioner’s Exhibit 9:	Staff Experience Checklist
Petitioner’s Exhibit 10:	Growing Kids Enrollment Packet
Petitioner’s Exhibit 11:	Application for Property Tax Exemption
Petitioner’s Exhibit 12:	Application for Property Tax Narrative
Petitioner’s Exhibit 13:	Secretary of State Certificate of Organization
Petitioner’s Exhibit 14:	Operating Agreement
Petitioner’s Exhibit 15:	Facility Lease Agreement
Petitioner’s Exhibit 16:	Pathways Level 3 Certificate
Petitioner’s Exhibit 17:	Enrollment Roster
Petitioner’s Exhibit 18:	Growing Kids Summary Income Statement-2019
Petitioner’s Exhibit 19:	Staff Experience Checklist
Petitioner’s Exhibit 20:	Growing Kids Enrollment Packet
Petitioner’s Exhibit 21:	Application for Property Tax Exemption
Petitioner’s Exhibit 22:	Application for Property Tax Narrative
Petitioner’s Exhibit 23:	Secretary of State Certificate
Petitioner’s Exhibit 24:	Level 3 Pathways Certificate
Petitioner’s Exhibit 25:	Enrollment Roster
Petitioner’s Exhibit 26:	Growing Kids Summary Income Statement
Petitioner’s Exhibit 27:	Staff Experience Checklist
Petitioner’s Exhibit 28:	Growing Kids Enrollment Packet
Petitioner’s Exhibit 29:	Enrollment-Warsaw 2019, 2020, 2021
Petitioner’s Exhibit 30 <sup>1</sup> :	Scope and Sequence of Education

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<sup>1</sup> The taxpayer listed an Exhibit 31-Corporate Structure-on its exhibit list, but they did not provide the exhibit.

Petitioner's Exhibit 32 <sup>2</sup> :	Educational Programming Schedule
Respondent's Exhibit A:	Aerial photograph of subject
Respondent's Exhibit B:	Property Record Card
Respondent's Exhibit C:	Property Record Card
Respondent's Exhibit D:	Personal Property Form
Respondent's Exhibit E:	Email from Assessor to Counsel-March 2021
Respondent's Exhibit F:	Copy of Ind. Code 6-1.1-10-46
Respondent's Exhibit G:	Copy of Ind. Code 6-1.1-10-16
Respondent's Exhibit H:	DLGF Memo-June 17, 2019
Respondent's Exhibit I:	Copy of Lease-Warsaw Land Development
Respondent's Exhibit J:	<i>Lafayette Group Properties v. Tippecanoe Assessor IBTR 2019</i>
Respondent's Exhibit K:	<i>Indi-Kid, Inc. v. Tippecanoe Assessor, IBTR 2019</i>
Respondent's Exhibit L:	Business Entity Report-WLD
Respondent's Exhibit M:	Indiana Certificate of Organization-WLD
Respondent's Exhibit N:	Indiana Business Report for GK
Respondent's Exhibit O:	Indiana Certificate of Incorporation-GK
Respondent's Exhibit P:	Certificate of Assumed Name
Respondent's Exhibit Q:	DLGF Class Training Handout-August 2019

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. During cross-examination, the Petitioners objected to a question the Assessor asked of Ms. Lovelady about WLD's involvement in educating the children at the school. They contended that the subject was beyond the scope of direct examination. Because it was not beyond the scope, we overrule the objection and admit the testimony.
7. The Petitioners objected to Respondent's Ex. E, an email from the Assessor, and Respondent's Exs. H, and Q, two documents produced by the DLGF. We note that our procedural rules allow hearsay, provided that it is not the sole basis for our determination. Thus, we overrule the objection but do not base our determination on these exhibits.

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<sup>2</sup> The taxpayers also included documents unrelated to these appeals, for a school located in Elkhart County. These several pages appear to be inadvertently mixed into the exhibits after Petitioner's Exhibit 32.

8. The Petitioners also objected to the Kosciusko County Assessor presenting her own case-in-chief, arguing that it bordered on the unlicensed practice of law. But parties are allowed to represent themselves even when appearing in an official capacity. Thus, we overrule the objection.

#### **FINDINGS OF FACT**

9. The subject property consists of real and personal property. Warsaw Land Development (“WLD”) filed appeals for the land and improvements while GK Warsaw Childcare Corporation (“GK”) appealed for an exemption on the personal property. The improvements include a new building constructed specifically for use as an early childhood education center. Another real estate holding company, GK Real Estate LLC, a parent company, owns and controls WLD as well as other real estate holding entities. *Harvey testimony; Loveland testimony; Pet’r. Brief; Resp’t. Exs. B, C, L.*
10. Mike and Beth Garatoni formed WLD, an Indiana for-profit limited liability company, for the purpose of constructing the school’s building in 2018. The subject property includes wooded acres, playgrounds, fenced sections, a building with bullet proof glass, and special security features. The building houses personal property such as chairs, desks and other items used for early education purposes. WLD leased the land and improvements to GK Warsaw Childcare Corporation for five years for \$17,000 a month. GK is responsible for payment of taxes, assessments, insurance, and upkeep. *Harvey testimony; Lovelady testimony; Pet’r. Ex. 3; Resp’t. Ex. I, M.*
11. The Garatonis signed the lease on behalf of WLD, the landlord, as a member. He also signed on behalf of GK, the tenant, as its president. GK incorporated as a for-profit organization in 2018. GK uses the property solely for educating pre-school aged children. In 2020, 35% of the children were four and five years old. Total enrollment as of January 1, 2020 was 110 with 39 children who were four and five. *Harvey testimony; Lovelady testimony; Form 132; Pet’r. Ex. 6; Resp’t. Ex. I, N, O.*
12. The Garatonis own ten other separate education companies across Northern Indiana. They opened the first school in 1995. They own all of the various legal entities involved

in operating, owning, and building the Warsaw school. There are no other owners. The Garatonis formed another entity, GK Management Corp., to operate the daily functions of all of the schools, and this third entity pays all employees across the organizations through this management company. The Internal Revenue Service treats all of the entities as one for purposes of federal taxation. *Harvey testimony; Pet'r. Brief.*

13. At the school in Warsaw, the entire day's activities are focused on education and learning, even when children are playing. A top priority is also children's physical and mental health. The Center is nationally accredited and is a Level 3 Pathways center. Teachers and staff meet legal requirements for their own academic credentials. Parents pay tuition to the school. *Lovelady testimony; Harvey testimony; Pet'r. Exs. 5, 24.*

#### CONCLUSIONS OF LAW

14. 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 (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 § 6-1.1-10-46 provides strict limitations on when a property used for-profit early childhood educational services, such as the subject property, can receive an exemption. It provides, in relevant part:

- (a) 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 under section 16 of this chapter only if all of the following requirements are satisfied:
  - (1) The primary purpose of the provider is educational.
  - (2) The provider is the property owner and the provider also predominately occupies and uses the tangible property for providing early childhood education services to children who are at least four (4) but less than six (6) years of age . . .

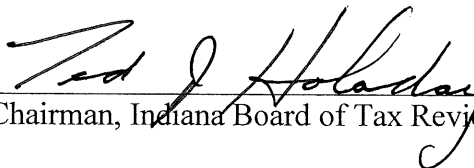
15. There is little dispute that the subject property is used for educational purposes at least a portion of the time. But the statute clearly requires that the provider of the educational services also be the property owner. Here, WLD is a real estate holding company that owns the land and building, which it rents to another separate corporation. A third legal entity, a management company, operates the school. While the owners of these three companies may ultimately be the same people, the Garatonis, they remain three separate corporations. The Petitioners ask us to look past the requirement of Ind. Code § 6-1.1-10-46(a)(2), arguing that because the various entities involved have shared ownership, this statute should not prohibit them from receiving an exemption. But different corporate identities cannot be disregarded. The Indiana Tax Court emphasized in 2019 that a basic principle of the U.S. legal system recognizes that corporate entities are separate legal personalities. *St. Mary's Building Corporation v. Redman*, 135 N.E. 3d 681 (Ind. Tax Ct. 2019). We cannot ignore the fact that the owner of the property, WLD, is not the same entity that is using the property. Although the Garatonis may have had very good and necessary reasons for creating these different corporations, such decisions can have other consequences, such as being subject to property taxation.
16. The Petitioners argue that denying an exemption for the subject property would be elevating “form over substance” which is not preferred under Indiana Law. But this argument misstates the issue. The requirement that the owner and provider be one in the same as an express requirement of the statute, not a mere procedural hurdle. For us to hold otherwise would be to ignore the clear intent of the Legislature. The Petitioners also point to *Johnson County Property Tax Assessment Board of Appeals v. KC Propco, LLC* 28 N.E. 3d 370 (Ind. Tax Ct. 2015), a case where the Tax Court upheld an exemption for a leased early childhood educational center. But that case predates the creation of Ind. Code § 6-1.1-10-46 and thus does not control.
17. In the alternative, the Petitioners argue that Ind. Code § 6-1.1-10-46 does not apply because it is “relevant only to a “provider” of services seeking an exemption” and thus owners who are not providers can seek an exemption under the general exemption statute

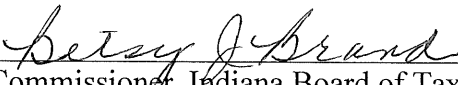
without meeting the requirements of Ind. Code § 6-1.1-10-46. But the language of the statute clearly applies to any property used for for-profit educational services, regardless of whether the owner or the provider is seeking the exemption. In addition, such an interpretation would render the requirement that the educational provider be the property owner meaningless. For-profit early childhood education centers must meet the requirements of Ind. Code § 6-1.1-10-46 to receive an exemption.

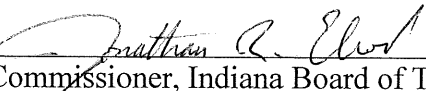
18. Finally, we note that because we have determined the subject property is not eligible for an exemption, we need not address the Assessor's argument that the exemption should be denied because the Petitioners' attorney, rather than the property owner, signed the exemption applications.

#### CONCLUSION

Ind. Code 6-1.1-10-46 requires the provider of for-profit early childhood educational services to be the property owner in order to receive an exemption. In this case, the educational provider is a different corporation than the property owner. Thus, we find the subject property to be 100% taxable.

  
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>.