

REPRESENTATIVE FOR PETITIONER:

Michael “Bruce” Abrahamson, Manager, You Glow LLC

REPRESENTATIVES FOR RESPONDENT:

Marilyn Meighen, Attorney
Ayn Katherine Engle, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

You Glow LLC,)	Petition:	45-027-13-2-8-01010-16
)		
Petitioner,)	Parcel:	45-07-20-355-031.000-027
)		
v.)	Assessment Year:	2013
)		
Lake County Assessor,)		
)		
Respondent.)		

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

April 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. You Glow argued the subject property should receive a partial exemption for certain purportedly charitable activities. We find the subject property is 100% taxable because You Glow’s appeal to the Board was untimely and it failed to demonstrate that it owned, occupied, or used the subject property for exempt purposes.

PROCEDURAL HISTORY

2. You Glow filed an exemption application with the Lake County Assessor for the 2013 assessment year seeking a 100% land and 70% improvements exemption for the subject property. The PTABOA denied the exemption application. On April 25, 2016, You Glow filed a Form 132 petition with the Board.
3. This case involved significant pre-hearing litigation including a Motion to Dismiss from the Assessor and a Motion in Limine and a Motion for Summary Judgment from You Glow. These motions are addressed below.
4. On October 22, 2018, the Board's designated Administrative Law Judge, Timothy Schuster ("ALJ"), held a hearing on the Motion in Limine, the Motion to Dismiss, and the merits of the case. Neither he nor the Board inspected the property.
5. Michael "Bruce" Abrahamson represented You Glow in his capacity as manager and testified under oath. Marilyn Meighen and Ayn Engle represented the Lake County Assessor. Catherine Eveland testified under oath for the Assessor.
6. You Glow submitted no exhibits. The Assessor submitted the following exhibits:
 - Respondent's Ex. A: Form 136 application for an exemption on the subject property,
 - Respondent's Ex. B: Form 120 notice of action on exemption application on the subject property,
 - Respondent's Ex. C: Form 132 petition to the Board for review,
 - Respondent's Ex. D: Affidavit of Laura Mercado,
 - Respondent's Ex. E: Copies of the second and third notice of action on the application for the subject property,
 - Respondent's Ex. F: Business filing for Amazing Enterprises LLC showing same address as subject property.
7. The subject property is a residence¹ located at 8840 Baring Avenue in Munster.

¹ Abrahamson twice referred to the subject property as a "residence." The record contains almost no additional information about the subject property.

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

OBJECTIONS

9. You Glow objected to the Respondent's Ex. F. This exhibit is a series of filings with the Indiana Secretary of State for an entity identified as Amazing Enterprises LLC. You Glow objected because Amazing Enterprises is a separate entity that Abrahamson claimed had "nothing to do with anything in this docket." In response, the Assessor points out that the two entities share the same address. We understand You Glow's objection to be a relevance objection. Evidence is relevant if: (1) it has any tendency to make a fact more or less probable than it would be without the evidence; and (2) the fact is of consequence in determining the action. In an exemption case, the presence of another corporation sharing the subject property is extremely relevant. Thus, the objection is overruled and Respondent's Ex. F is admitted into evidence.
10. The Assessor objected to a question directed at his witness, Ms. Eveland, about whether it was possible that the PTABOA notice was not mailed. The Assessor argued that Eveland would have to speculate to answer the question because she does not work in the mailroom. We find that because Eveland testified to personally delivering the notice to the mailroom she at least had some personal knowledge of the mailing process. Thus, we overrule the Assessor's objection and admit the testimony into evidence.

PENDING MOTIONS

11. You Glow filed a motion in limine seeking to prevent the admission of certain exhibits that You Glow anticipated the Assessor would offer. The Assessor never offered these exhibits. Therefore, You Glow's motion is moot.
12. You Glow filed a motion for summary judgment arguing that it is entitled to an exemption because it is a 501(c)(3) and conducts charitable activities. In response, the Assessor argued that You Glow failed to show it owned, occupied, and used the property

for charitable purposes. We agree with the Assessor. You Glow's designated evidence does not establish how the subject property is used at all, much less that it was used for charitable purposes. Thus, the Motion for Summary Judgment is denied.

13. The Assessor also filed a Motion to Dismiss on the grounds that You Glow's Form 132 petition was untimely. We address the Assessor's arguments below within our larger analysis.

CONTENTIONS

a. You Glow's arguments

14. You Glow contends that it did not timely receive notice of the PTABOA's determination. Abrahamson testified that he called to request the form multiple times and that once received he filed an appeal promptly. *Abrahamson testimony.*
15. Abrahamson testified that he was the manager of You Glow, LLC and Excite Worldwide, a 501(c)(3) non-profit corporation.² He testified that he provided medical advice to veterans and their families about where to seek specialty services, such as eye care or kidney dialysis. Abrahamson gave one example of referring an individual to a doctor in Chicago. He stated he could not provide additional examples because of HIPAA³ restrictions. Abrahamson also testified that You Glow assists veterans with obtaining household goods, and with housing placement services. *Abrahamson testimony.*

b. Assessor's arguments

16. The Assessor contends that You Glow's application for exemption is untimely because the filing was approximately 296 days late. Catherine Eveland, an employee of the Assessor's office, testified that a copy of the PTABOA determination was initially sent in April 2015 to a P.O. Box associated with the subject property in the Assessor's computer

² The exact relationship between You Glow, Excite Worldwide, and the subject property is unclear from the record.

³ Health Insurance Portability and Accountability Act of 1996.

system.⁴ She also stated that additional copies were mailed to the subject property on October 20, 2015, December 15, 2015, and on March 9, 2016. She personally delivered these to the mailroom. She also attempted to email the decision to Abrahamson in January and March of 2016. *Eveland testimony; Resp't. Exs. D, E, & F.*

17. Alternatively, the Assessor argued that You Glow failed to show that it owned, occupied, and predominately used the subject property for charitable purposes.

ANALYSIS

A. You Glow's petition to the Board was untimely

18. The Assessor moved to dismiss You Glow's petition on the grounds that it was not timely filed. As discussed above, the initial notice was not mailed to the address listed on the Form 136 application, but later mailings were. Abrahamson claims that he did not receive any of these mailings. As of October 2015 Abrahamson was aware that the PTABOA had issued its decision, as both parties agree they spoke about the mailing over the phone.
19. Abrahamson claims that he timely filed his exemption application after receiving a copy of the PTABOA determination. But he did not file this application until April 25, 2016, approximately six months after he admittedly knew the PTABOA had issued its determination. In addition, we find it unlikely that all three of the Assessor's mailings were lost in the mail. Thus, we find You Glow's petition is untimely. But given our general preference to resolve cases on the merits, we will address You Glow's substantive claims below.

B. You Glow failed to make a prima facie case

20. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County Property*

⁴ This address apparently came from Amazing Enterprices LLC, another company that is registered at the subject 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.*

21. Indiana Code § 6-1.1-10-16(a) provides an exemption for all or part of a building that is owned and exclusively or predominantly used and occupied for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c); *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cnty. Assessor*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct. 2009) *reh’g. den.* 914 N.E.2d 13 (Ind. Tax Ct. 2009). The term “charitable purpose” must be understood in its broadest constitutional sense. *Knox Cnty. Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005). Courts will generally find a charitable purpose if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *Id.*
22. Property is predominantly used for exempt purposes if it is used for those purposes more than half the time it is used or occupied during the year ending on the assessment date. I.C. § 6-1.1-10-36.3(a). Property is 100% exempt if it is predominantly used for exempt purposes by a church, religious society, or nonprofit school. I.C. § 6-1.1-10-36.3(c)(2). Other exempt uses are only allowed an exemption that “bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the [exempt] purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.” I.C. § 6-1.1-10-36.3(c)(3). Where a property is used for both exempt and non-exempt purposes, a taxpayer claiming an exemption must compare the time of exempt and non-exempt use. *See Hamilton Cnty. Ass’r v. Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017). (“[F]ailure to provide the Indiana Board with a

comparison of the relative amounts of time that a property was used for exempt and non-exempt purposes is fatal to a claim of exemption under Indiana Code § 6-1.1-10- 36.3.”)

23. You Glow failed to show that it owned, occupied, or used the subject property for exempt purposes because it primarily relied on conclusory statements that it performed charitable activities at the subject property. You Glow’s evidence of charitable activities is vague at best. Although Abrahamson testified to one example, there is little to show that these activities rise to the level sufficient to justify the loss of tax revenue. Even were we to accept that these activities were charitable in nature, You Glow offered almost nothing to show how the subject property was used for those activities, much less that it was predominantly used for exempt purposes.⁵
24. In addition, there is virtually no evidence in the record about the subject property other than that it is a residence. By requesting a 70% exemption, You Glow admitted that at least some non-exempt activities happened at the subject property, presumably including its use as a residence. But You Glow did not provide reliable evidence of the relative time the property was used for exempt and non-exempt activities as required by *Duke*. We also note that You Glow failed to show that it owned the property for exempt purposes, or that Excite Worldwide or Amazing Enterprises possessed their own exempt purposes.
25. Finally, You Glow made a number of allegations regarding the conduct of the Assessor’s counsel, and requested the Board refer the Assessor’s counsel to the Indiana Supreme Court Disciplinary Commission. We do not find such a referral is merited.

CONCLUSION

26. You Glow’s Form 132 application was untimely. But even if the application was timely, You Glow failed to show that it owned, occupied, or used the subject property for exempt

⁵ We note that You Glow made a number of unsworn factual assertions in various filings both before and after the hearing. Even were we to accept those facts as true, You Glow would still have failed to demonstrate that the subject property qualified for an exemption.

purposes. Thus, we find in favor of the Assessor and find the subject property 100% taxable for the 2013 assessment year.

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

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>>.