

REPRESENTATIVE FOR PETITIONER: Melissa Torres, Beckman Lawson, LLP

REPRESENTATIVE FOR RESPONDENT: Sarah Schreiber, HallerColvin, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Pine Hills Church, Inc.,)	Petition No.:	02-057-21-2-8-00837-21
)		
)	Parcel No.:	02-02-33-278-104.000-091
Petitioner,)		
)	County:	Allen
v.)		
)	Assessment Year:	2021
Allen County Assessor,)		
)		
Respondent.)		
)		

Date AUGUST 25, 2023

FINAL DETERMINATION

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

I. INTRODUCTION

- To qualify for an exemption under Indiana’s general property tax exemption statute (Ind. Code § 6-1.1-10-16(a)), a property must be owned, occupied, and used for an exempt purpose. Pine Hills Church, Inc., seeks a 100% exemption for real property that it leased to a for-profit entity, Pine Hills Learning Place, LLC (“PHLP”). PHLP in turn subleased the property to Preschool Learning Corporation (“PLC”), another for-profit entity, which operated a childcare facility at the property under the name “The Learning Place.” Although the leases require PLC to adhere to various religious principles in running the childcare operation, and religious content permeates daily and weekly activities that PLC provides to the children, we cannot simply impute the Church’s religious purpose to PLC.

Based on PLC’s organizational documents as well as its operation of The Learning Place, we find that PLC had a dominant profit motive in occupying and using the property. We therefore find that the property was not entitled to an exemption.

II. PROCEDURAL HISTORY

A. Prehearing Filings and Hearing

2. The subject property had received an exemption since at least 2008. On October 11, 2021, however, the Allen County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 120 notice removing the exemption for the 2021 assessment year. The Church timely filed a Form 132 petition with us appealing the PTABOA’s decision seeking a 100% exemption.

3. The Assessor moved for summary judgment, which we denied. Beginning on March 28, 2023, our designated administrative law judge, Erik Jones (“ALJ”), held a two-day telephonic hearing on the merits. Neither he nor the Board inspected the property. Jonathan Hyde, Beverly Maxwell, and John Swihart all testified under oath.

4. The parties offered the following exhibits:

The Church’s Exhibits

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|------------|------------------------------------------------------------------------------------------------------------------------|
| Exhibit 1 | Commercial lease between the Pine Hills Church and Pine Hills Learning Place, signed May 1, 2013, |
| Exhibit 2 | Time usage report, |
| Exhibit 2A | Time usage report for 2020 (corrected by counsel), |
| Exhibit 3 | Sublease agreement between Pine Hills Learning Place and Preschool Learning Corporation (unsigned), dated May 1, 2013, |
| Exhibit 5 | Parent’s Notice – State Form 49444 (R/1-09), |
| Exhibit 6 | Pine Hills Learning Place FSSA registration and inspection history, |
| Exhibit 7 | Provider Certificates, dated April 8, 2021, |
| Exhibit 8 | Public Relations Documents, including enrollment documents, enrollment flyer, mailers, and tri-fold brochure, |
| Exhibit 9 | Newspaper articles, |
| Exhibit 10 | Salary comparables (Indeed.com), |
| Exhibit 11 | Photographs of religious events on subject property, |

Exhibit 12 Inspection photographs, dated Sept. 13, 2022.

The Assessor's Exhibits

Exhibit A 2021 Property Record Card for subject property,
Exhibit B Form 103, Form 104, Form 120, Form 132, and Form 136 (and all other forms) filed for appeal,
Exhibit F Preschool Learning Corp. Articles of Incorporation,
Exhibit G Preschool Learning Corp. periodic report, filed Nov. 23, 2023 (Colorado),
Exhibit H Pine Hills Church, Inc., Certificate of Incorporation,
Exhibit I Pine Hills Church, Inc., Articles of Incorporation,
Exhibit J Certificate of Assumed Business Name Preschool Learning Corp., d/b/a Pine Hills Kiddie Garden,
Exhibit K Preschool Learning Corp. Certificate of Authority, dated Mar. 28, 2005,
Exhibit L Applicate for Certificate of Authority of a Foreign Corporation – Preschool Learning Corp., dated Feb. 15, 2005,
Exhibit M Certificate of Organization for Pine Hills Learning Place, LLC, dated Feb. 1, 2013,
Exhibit N Articles of Organization for Pine Hills Learning Place, LLC,
Exhibit O 2021/2022 Business Entity Report for Domestic Limited Liability Company Pine Hills Learning Place, LLC (Filing No. 8880204),
Exhibit P 2021/2022 Business Entity Report for Domestic Nonprofit Corporation Pine Hills Church, Inc. (Filing No. 8908322),
Exhibit Q 2021/2022 Business Entity Report for Foreign For-Profit Corporation Preschool Learning Corp. (Filing No. 8922066),
Exhibit R 2019/2020 Business Entity Report for Foreign For-Profit Corporation Preschool Learning Corp. (Filing No. 8232567),
Exhibit S Domestic Limited Liability Company – Pine Hills Learning Place, LLC, dated Feb. 8, 2018 (Filing No. 7829753),
Exhibit U Business Personal Property Form 104 for Pine Hills Learning Place (for 11331 Coldwater Road location),
Exhibit AD Emergency contact card,
Exhibit AH Application for admission,
Exhibit AI Child profile,
Exhibit AJ Contract for Child Care Services – Financial Agreement,
Exhibit AK Policy agreement,
Exhibit AL Bureau of Child Care Division of Family Resources, Safe Transportation of Food Responsibility,
Exhibit AN Child Care Development Fund Provider Eligibility Standards checklist,
Exhibit AO Commercial lease between Pine Hills Church and Pine Hills Learning Place, dated May 1, 2013,
Exhibit AS Pine Hills Learning Place, LLC balance sheet for Dec. 31, 2020,

Exhibit AU	Pine Hills Learning Place, LLC income statement for Dec. 31, 2020,
Exhibit AV	Sublease between Pine Hills Learning Place, LLC and Elevate Church,
Exhibit AW	Pine Hills Learning Place Tuition Schedules, dated Jan 6, 2020, and Aug. 2, 2021,
Exhibit AY	Preschool Learning Corp. statement of assets, liabilities, and equity-income tax basis, dated Dec. 31, 2020,
Exhibit BA	Preschool Learning Corp. statement of assets, liabilities, and equity-income tax basis, dated Dec. 31, 2020,
Exhibit BB	Preschool Learning Corp. statement of revenues expenses income tax basis- before tax, dated Dec. 31, 2020,
Exhibit BC	Standards for Participation in Indiana, Unlicensed Registered Child Care Ministry,
Exhibit BD	Voluntary Certification Program Checklist,
Exhibit BE	Sublease between PHLP and PLC,
Exhibit BI	Pine Hills Learning Place, LLC balance sheet, dated Dec. 31, 2021,
Exhibit BJ	Christian Service Foundation Receipt, dated Aug. 22, 2022,
Exhibit BK	Christian Services Foundation Restructured Loan #50 balance,
Exhibit BL	Daily Schedules,
Exhibit BP	Spring / Fall installment tax bill (2021 pay 2022),
Exhibit BQ	Affidavit of John Swihart,
Exhibit BR	OWL Pre-K Curriculum,
Exhibit BS	Houghton Mifflin Harcourt-Big Day for Pre-K Overview,
Exhibit BT	Savvas Learning Company program documents,
Exhibit BU	Creative Curriculum Teaching Guides & Studies – Teaching Strategies,
Exhibit BV	The Creative Curriculum® for Preschool, Guided Edition,
Exhibit CG ¹	All deposition transcripts.

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

¹ We note that the deposition transcript was split into two parts due to an apparent clerical error. At the hearing, the transcripts were labeled as “Respondent’s Exhibit BM,” but they were introduced and admitted as Respondent’s Exhibit CG. There is no difference between the documents. For ease of reference, we refer to the deposition transcripts as they were admitted (“Exhibit CG”) for the purposes of this determination.

B. The Assessor's Post-Hearing Motion to Take Official Notice or in the Alternative Supplement the Record.

6. Nearly two months after the hearing on the merits, the Assessor filed a motion asking us to take official notice of emails from Beth Kumfer, a representative of the Family and Social Services Administration. In those emails, Kumfer responded to questions from a March 23, 2023 email from the Assessor's exemption deputy, John Swihart, asking whether a for-profit childcare provider that "is not a 501(c)(3)" can qualify as a "childcare ministry," and whether a childcare ministry can be operated by a third-party lessee of church-owned property or instead must be operated by a church. As an alternative to us taking official notice, the Assessor asked us to allow her to supplement the record with the emails.
7. The Church responded, arguing (1) that our procedural rules do not allow parties to submit post-hearing evidence unless we request it, (2) that the emails do not contain the type of information that is properly the subject of official or judicial notice, and (3) that Kumfer's responses are inadmissible hearsay.
8. We agree with the Church and deny the Assessor's motion. Kumfer's answers to Swihart's questions are not matters of which we can take official notice under our procedural rules. Although we may take notice of "[c]odes or standards that have been adopted by an agency of . . . this state," the responses do not purport to be that. *See* 52 IAC 4-6-11(3). As to the Assessor's alternative request to supplement the record, neither the ALJ nor the Board requested post-hearing evidence. *See* 52 IAC 4-6-15 (providing that no post-hearing evidence will be accepted unless requested by the Board or our administrative law judge). While due process or other exigencies might compel us to re-open the record, our rule is specifically intended to prevent parties from seeking to belatedly introduce evidence that was known or discoverable prior to the hearing. The Assessor is not entitled to a second bite at the apple.

III. OBJECTIONS

9. The parties made several objections during the hearing. The ALJ ruled on many of those objections, and we adopt his rulings. He also took several objections under advisement, which we now address.

A. Assessor's Objections

10. The Assessor objected to Exhibit 2, a usage report for 2021. The Church's counsel claimed to have prepared the report based on information from Beverly Maxwell, PLC's sole shareholder and PHLP's sole member. The Assessor offered several grounds for her objection, including that counsel, rather than Maxwell, had prepared the report and that Maxwell admitted that it was inaccurate. *Tr. I at 156-57*. We sustain the objection.
11. Counsel for the Church indicated that she would prepare a revised exhibit based on Maxwell's testimony about the property's usage. *Tr. I at 156-57, 165*. The Assessor responded that her original objections would still apply to any revised usage report, although she would withdraw her objection regarding inaccuracy if the revisions mirrored Maxwell's testimony about the property's usage "to a T." *Tr. I at 166*. After the hearing, the Church submitted Exhibit 2A, a revised usage report for 2020 and 2021.
12. We exclude Exhibit 2A. As explained above, we do not accept post-hearing evidence unless we or the ALJ have requested it. Although the ALJ held open the possibility of the Church submitting a revised exhibit, that was in the middle of the first day of what turned out to be a two-day hearing. He did not request a revised Exhibit 2A.² Regardless, Maxwell did not testify to the accuracy of the revised exhibit, and it cannot serve as substantive evidence. At most, it might serve as an illustrative guide to Maxwell's testimony. But her testimony about the property's usage was relatively short and easy to follow. We fail to see the benefit of such an illustrative guide offered after the hearing was completed.

² It would have been well within the ALJ's discretion to permit the Church to re-open its case-in-chief before the close of the hearing. But the Church failed to seek leave to do so.

13. The Assessor also objected to Exhibit 9, a series of newspaper articles about the The Learning Place and its impact on the local community on grounds that the articles are “riddled with hearsay.” *Tr. I at 197-98*. She also objected to Maxwell’s testimony about the articles on the same grounds. *Id.* We agree that the articles are hearsay. *See* Ind. Evidence Rule 803(1) (defining hearsay as a statement made by a declarant other than while testifying at hearing that is offered to prove the truth of the matter asserted). But our procedural rules allow us to admit hearsay, with the caveat that we cannot base our determination solely on hearsay that has been properly objected to and that does not fall within a recognized exception to the hearsay rule. 52 IAC 4-6-9(d). We therefore overrule the objection, although we do not base any part of our determination of the Church’s appeal on the articles or on Maxwell’s testimony about them.
14. The Assessor also made a hearsay objection to Maxwell’s testimony about wages that other daycare providers paid to their staffs as shown by screenshots from *Indeed.com*. *Tr. I at 200-03*. As with the newspaper articles, we overrule the objection but do not ultimately rely on the disputed testimony.
15. Finally, the Assessor objected to Exhibit 11, photographs of religious events taking place in the property’s chapel, on relevance grounds. Maxwell testified that the chapel was not used from March 30, 2020, to July of 2022 because of the COVID-19 pandemic. *Tr. I at 209*. According to the Assessor, the photographs are therefore irrelevant because they do not depict the property’s use on the assessment date (January 1, 2021). *Tr. I at 211*. We disagree. A property is exempt under Ind. Code § 6-1.1-10-16(a) only if it is exclusively or predominantly occupied or used for an exempt purpose. I.C. § 6-1.1-10-36.3(c). Predominant occupancy and use is determined by comparing the relative amounts of time that a property is occupied or used for exempt and non-exempt purposes during the “year that ends on the assessment date.” I.C. § 6-1.1-10-36.3(c)(3). At a minimum, what occurred at the chapel during the first three months of 2020 is relevant. We therefore overrule the Assessor’s objection.

B. The Church's Objections

16. The Church objected to Exhibit AD—emergency contact cards and financial agreements through which parents were required to agree that they were financially responsible for tuition and various fees. According to the Church, the fact that PLC charged tuition is irrelevant to determining the existence of a religious purpose. *Tr. I at 247-50*. We disagree. The Assessor claims that PLC ran the childcare operation at the property with a commercial profit motive rather than a religious purpose. Because the financial agreements are relevant to that question, we overrule the objection.
17. Finally, the Church objected to Exhibits AS, AU, AY, BA, BB, and BI—various financial documents for PHLP and PLC—on grounds that they are confidential and irrelevant. *Tr. I at 253-67*. The Church stipulated that PHLP and PLC were organized for profit and argued that the financial documents were therefore unnecessary. *Id. at 257*. As explained above, however, the Assessor's theory does not rest merely upon PHLP and PLC being organized for profit, but rather on the argument that they had a commercial profit motive—instead of a religious purpose—in managing the property and running the childcare operation there. The financial documents are relevant to that issue. And the ALJ explained that the Church could provide substitute copies of the exhibits on green paper in accordance with 52 IAC 4-6-10.³ *Id. at 254*. The Church has not shown that the potential harm from admitting the documents (with green-paper substitutes) outweighs their relevance. We therefore overrule the Church's objections.

IV. FINDINGS OF FACT

18. The Church is an Indiana nonprofit corporation that has operated as a church for over 50 years. It owns the subject property, which is located on Coldwater Road in Allen County. Until 2012, the Church held worship services there. In 1975, it also began an unlicensed

³ Parties must redact any confidential information that is not necessary to the disposition of an appeal. 52 IAC 4-6-10(a). Where pages of a document contain confidential information that is necessary to the appeal's disposition, parties must submit those pages on green paper. 52 IAC 4-6-10(b). Confidential information "shall be disclosed only in a manner consistent with IC 6-1.1-35-9, IC 5-14-3-1 and other applicable law." 52 IAC 4-6-10(g).

childcare ministry at the property in order to “reach future generations” and grow its congregation. *Exs. 6, I; Tr. I at 33-40, 48, 138.*

19. The childcare ministry began as a volunteer endeavor. Around 1980, however, the Church determined that it needed additional expertise to operate the ministry. The Church’s operations executive, Jonathan Hyde, explained that a successful childcare ministry must engage with children in ways other than faith-sharing and doctrinal teaching to “enrain the Word of God into [children’s] hearts.” To realize this goal, the Church contracted with Beverly Maxwell and her then husband to begin managing the childcare operation. Maxwell is a Christian and her faith aligns with the Church’s doctrine. *Tr. I at 33-40, 48, 138, 146-47.*

20. In 1992, Maxwell formed PLC, a for-profit corporation headquartered in Colorado of which she is the sole shareholder. PLC is not exempt from federal income taxation under section 501 of the Internal Revenue Code. PLC’s Articles of Incorporation say nothing about religion. Instead, they list PLC’s purpose as providing childcare and preschool education:

The purpose for which this corporation is organized is for use in connection with the operation of a Child Care Center and Preschool Education under the regulation and guidelines of the State of Colorado or the regulations and guidelines of the state wherein any such operation may be located.

PLC ran the childcare operation at the subject property under a management contract with the Church. *Ex. F; Tr. I at 147, 233.*

21. In June 2007, the Church’s then administrator and one of its founding members, Thomas Swihart, signed an application requesting a religious-purpose exemption for the subject property. In that application, Swihart checked a box indicating that the property was sometimes used for purposes not related to the “claimed exempt use” and identified the unrelated use as “DAYCARE CTR OWNED BY OTHER CORP.” The PTABOA granted the exemption because it determined that the property was predominantly used as a church. Hyde acknowledged that, other than the Church later moving out, the

property's use has not changed since that application. *Ex. B; Tr. I at 90-91, 235-36; Tr. II at 13-14.*

22. By 2012, the Church's congregation had grown to the point that it needed a new facility. Believing that its new facility would not be adequate to house the childcare operation, the Church elected not to sell the subject property. Instead, it took out a loan from Christian Services Foundation and renovated the property. Maxwell formed PHLP, a for-profit limited liability company headquartered in Colorado, of which she is the sole member. Like PLC, PHLP is not exempt from federal income taxation. The Church entered a triple-net commercial lease with PHLP, which in turn subleased the property to PLC. PLC continued to use the property to run The Learning Place. PHLP was created to manage the real estate, and its primary function is to collect rent from PLC and pay the Church. The Church could have simply employed Maxwell or PLC to run the childcare operation, but it wanted to limit its potential liability and shift the risk of profit and loss to Maxwell. Although Maxwell testified that the leases were intended to memorialize the relationship that existed since 1980, there is no evidence that Maxwell, PLC, or any entity other than the Church had a possessory interest in the property before 2012. *Exs. I, BJ, BK, CG at 44, 48-49, 53-54, 176-77; Tr. I at 35-36, 57-58, 79-83, 109-111, 136-37, 148-52, 213-14, 233.*
23. Under the triple-net lease between the Church and PHLP ("prime lease"), PHLP is responsible for rent, insurance, utilities, taxes (should they be assessed), and all maintenance and repairs beyond the renovations for which the Church obtained the construction loan. The rent reflects the amortized principal balances (with a variable interest rate) of that construction loan and of another loan that the Church received from Christian Services Foundation. The rent amounts to \$ [REDACTED] per year. The sublease essentially passes PHLP's rental and other obligations through to PLC. PLC also pays rent to Coldwater 329, LLC, another for-profit entity owned by Maxwell. Coldwater 329 owns adjacent property with a garage, parking spaces, and playing fields that PLC uses as

part of the childcare operation. That property also has a house that Coldwater 329 leases to a “private individual.” *Exs. 1, 3, CG at 48-49, 170-73, 182-83; Tr. I at 109, 245-46.*

24. The prime lease contains several covenants concerning how the property must be operated, all of which also apply to PLC through the sublease. For example, Section 5.1 provides that the property must be used primarily for a childcare ministry and other consistent uses, including granting permission to third parties to temporarily use the property for ceremonies or celebrations or to use the gymnasium. PHLP cannot use the property for any other purpose without the Church’s consent. As recently as 2020, PHLP subleased space to Grace Gathering and Elevate City Church at market rates. *Exs. 1, AV; Tr. I at 229.*
25. Section 27 sets forth additional operational covenants, including:
- 27.1 Tenant will maintain its status as an unlicensed, registered childcare ministry as long as such designation is permitted under applicable law, through Landlord during the term of the Lease.
 - 27.4 Tenant is and will remain a registered ministry of Landlord.
 - 27.5 [O]ne of the many ways Landlord is used by God to transform the community is in its childcare ministry, Pine Hills Learning Place, operated by Tenant.
 - 27.6 Landlord values the Word of God, Prayer, Christ-likeness, Families, Individuals and Children. These values and beliefs are reflected and practiced at Pine Hills Learning Place operated by Tenant.
 - 27.7 Tenant will schedule a church service, or chapel, developed to meet the interests and needs of the children at Pine Hills Learning Place at least once a week. A ministry staff member from Landlord will lead the children in worship on a regular basis.
 - 27.8 Tenant hosts annual Christmas and Spring programs. These programs will be scheduled at Landlord’s Carroll Road campus of Pine Hills Church unless conflicts prevent the use of the worship center.

Exs. 1, 2 at p. 4, AV, BK; Tr. I at 43-46, 96; 139-43.

26. Maxwell meets with Church leadership roughly four times per year for coordination and oversight. At these meetings, Maxwell apprises the Church of “what’s going on” at the property, and they collaborate on the seasonal programs that the Church hosts at the property. PLC, however, controls the day-to-day operations at the property. PLC also owns the business personal property at the location and has not applied for an exemption for that personal property. *Exs. F, CG at 18-19, 38-39; Tr. I at 27-28, 71-72, 136-37, 167-70, 233-34, 239-40.*
27. Maxwell owns another for-profit, secular daycare center in Colorado called Advantage Learning Center. Maxwell’s daughter, Diana Eagle, is employed by and paid by Advantage, but she spends half her time working for PLC, and PLC reimburses Advantage for that time. As Maxwell explained, “[r]ather than have [Eagle] sign in and sign out on two corporations and get two paychecks, because I wholly own both organizations, it’s recognized that half of her time is spent doing solely work for [PLC] and they pay half her wages.” Maxwell is responsible for hiring, training, and firing staff; managing curricula; and ensuring equipment safety. *Ex. CG at 65; Tr I at 167-70, 239-41.*
28. To enroll a child at the facility, parents must complete an extensive application and questionnaire, in addition to multiple waivers and acknowledgements. PLC also requires prospective families to complete a Financial Agreement to ensure that PLC receives full tuition as well as fees for annual registration, field trips, and returned checks. PLC sets its tuition rates annually, based on factors like its operating budget and the overall market. This rate was about \$[REDACTED]/week for 2021. Although PLC charges approximately \$20-\$40 per hour less than secular daycare providers, it wants to be in line with the market, and it normally generates between \$[REDACTED] and \$[REDACTED] in annual profits. PLC strictly abides by its tuition plans; to retain a spot in the program, families must continue to pay even when the child does not attend. And PLC has removed families from the program for failing to make required payments. *Exs. AH, AJ, AK, AW, CG at 71-72, 91-92, 176; Tr. I at 119, 205-07, 250-52.*

29. During 2020, The Learning Place operated on two separate schedules. From January to March, it was open Monday through Friday, from 6:00 a.m. to 6:00 p.m. Due to the start of the COVID-19 pandemic, in April 2020 PLC changed the hours to 7:30 a.m. to 5:30 p.m. Most enrolled children spend between 10 and 12 hours at the property per day. Others attend only before or after school. *Ex. BL; Tr. I at 60-61; 155-62; 171-73.*
30. PLC provides children with what the Church views as a “holistic” mix of secular and religious instruction, including faith activities and traditional school subjects like math, science, and physical activities. PLC has no set curriculum for its infant room, and staff members focus on feeding, cleaning, and caring for the infants. PLC follows set curricula for children in other age groups, although the curricula differ between those groups. None of the curricula include specific religious instruction. But staff interweave religious content throughout the day through prayer and things like religious-themed stories, books, songs, and artwork. Although PLC does not formally track those activities, Maxwell estimated that they make up about 30 minutes per day for children who attend all day. For Kindergartners and school-age children, those activities amount to about 10-to-30 minutes and 10-to-15 minutes per day, respectively. Children also typically attend weekly 30-minute chapel sessions led by someone from the Church’s staff, although PLC suspended those sessions between April 2020 and early summer 2022 due to the Covid-19 pandemic. They also attend faith events that the Church hosts at the property for Christmas and Easter, and an event that Hyde described as an end-of-year program. *Exs. 11-12, BL, BQ, BR, BU, BV, CG at 138-56; Tr. I at 48, 59-64; 87-88, 208-11, 234-42.*
31. PLC created marketing materials for The Learning Place that emphasize Christian themes as well as the quality of its curriculum and instruction. The materials also advertise the program’s connection to the Church. *Ex. 8; Tr. I at 187-200.*

V. CONCLUSIONS OF LAW AND ANALYSIS

32. Although tangible property in Indiana is generally taxable, the Legislature has exercised its constitutional power to exempt certain types of property. *Hamilton Cty. Prop. Tax Assessment Bd. of App. v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). Because exemptions relieve properties from bearing their share of the cost of government services, they are strictly construed against taxpayers and in favor of the state. *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). A taxpayer bears the burden of proving that its property qualifies for an exemption. *Id.* Every exemption appeal “stand[s] on its own facts,” and it is the petitioner’s duty to walk us through the analysis. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cty. Ass’r*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009). Worthwhile activities or noble purposes alone do not suffice. Rather, a taxpayer must show that the property is being used to provide a benefit that justifies the loss of tax revenue. *See e.g., Dep’t of Local Gov’t Fin. v. Roller Skating Rink Operators Ass’n*, 853 N.E. 2d 1262, 1265 (Ind. 2006).
33. The Church claims an exemption under Indiana Code § 6-1.1-10-16. Subsection (a) of that statute 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*, 914 N.E.2d at 15.⁴ A property need not be owned, occupied, and used by the same entity to be exempt. *Oaken Bucket*, 938 N.E.2d at 657. In cases where the owner and the occupant or user are different entities, however, each must possess its own exempt purpose. *Id.*
34. The Church claims that the subject property was owned, occupied, and used exclusively for religious purposes. According to the Church, it established a childcare ministry to

⁴ The exemption extends to a tract of land on which an exempt building is situated, as well as to parking lots and other structures that serve the exempt building. I.C. § 6-1.1-10-16(c)(1)-(2). It also applies to personal property that is owned and used in a matter that would make it exempt if it were a building. I.C. § 6-1.1-10-16(e).

reach future generations and grow its congregation, and the ministry builds a foundation in Christ through all the activities at the property. The secular aspects of the curriculum are simply part of creating a well-rounded foundation for the children. While for-profit entities manage the property and run the childcare operation, they are owned by Maxwell, whose Christian beliefs align with the Church. And those entities are bound by the lease covenants that in the Church's view require The Learning Place to be operated to further the Church's underlying religious purpose.

35. The Assessor counters that the property was not owned, occupied, and used for religious purposes. According to the Assessor, the Church acknowledged as much in its 2007 exemption application when it referred to the childcare operation as unrelated to its claimed religious use. And PLC occupies and uses the property to run a commercial childcare business. Even if we were to find that the Church, PHLP, and PLC each had a religious purpose, the Assessor argues that the Church failed to prove that the property was predominantly used for that purpose because (1) it kept no usage logs, and (2) the inherently religious activities that it did identify accounted for only a fraction of the time that the property was used.
36. For the reasons discussed below, we agree with the Assessor on one dispositive point: PLC had a dominant commercial profit motive, rather than a religious purpose, in occupying and using the property to run a childcare operation. PLC is a for-profit corporation whose articles of incorporation do not even mention religion. Instead, PLC's stated purpose aligns with its sole shareholder's larger business of owning and managing childcare operations.
37. PLC runs the childcare operation at the property in a way that is designed to make a profit. It sets tuition based on factors like its operating budget and the overall market. It holds parents to their financial responsibilities and removes children from the program when their parents fail to live up to those responsibilities. Through those business practices, PLC normally makes between \$ [REDACTED] and \$ [REDACTED] in annual profits. It

competes with other childcare facilities in the market. While not determinative, the facts that Maxwell operates another non-religious daycare and that her daughter manages human resources functions at both suggest that the purpose of the operation is not predominantly religious.

38. The Church, however, asks us to ignore those facts, arguing that PLC's (and PHLP's) for-profit status is irrelevant. For support, it cites to *College Corner, LP v. Dep't of Local Gov't Fin.* In *College Corner*, the Tax Court reversed our denial of an exemption to a limited partnership that was formed for what the Court found was the charitable purpose of revitalizing an area of Indianapolis's historic Old Northside. *College Corner, LP v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 909-12 (Ind. Tax Ct. 2006). The Court found that our "hasty analysis" began and ended with the fact that the limited partner—which contributed equity to obtain mortgages and received a fixed 7% return when a revitalized property was sold—was organized for profit. *Id.* at 911-12. According to the Court, the limited partner's for-profit status and the return it received on its investment were inconsequential. Instead, the Court focused on the limited partner's articles of incorporation, which showed that it was organized to promote revitalization of low- and moderate-income neighborhoods throughout the communities of its banking subsidiaries, and on the fact that it was acting pursuant to the directives of the Community Reinvestment Act, which encourages financial institutions to help meet the credit needs of the communities they serve. *Id.* at 911. The Court therefore refused to "judicially impart any particular profit motive," to the limited partner's officers, directors or shareholders. *Id.* In doing so, it cited to *Susitna Borough v. King's Lake Camp*, 439 P.2d 441 (Alaska 1968), which held that an exemption is not lost where income is derived as an incident to the accomplishment of an exempt purpose rather than from a dominant profit motive. *Id.*
39. Despite some of its broad language, we do not read *College Corner* as holding that an entity's for-profit status is irrelevant to whether it has a charitable purpose. To the contrary, the Court recognized that a property does not qualify for exemption if such an

entity has a dominant profit motive in owning, occupying, or using a property. *See also, Tipton Cty. Health Care Found. v. Tipton Cty. Ass'r* 961 N.E.2d 1048 (Ind. Tax Ct. 2012) (holding that the for-profit status of a lessee-operator of an assisted living facility was germane to whether it had a private profit motive, rather than a charitable purpose, in leasing the property). More importantly, we do not merely rely on the fact that PLC was organized as a for-profit entity, but rather that it occupied and used the property to fulfill its dominant commercial motive. Unlike the limited partner in *College Corner*, which was organized to accomplish charitable revitalization objectives, and which only received a small commission from that activity, PLC's stated corporate purpose is unrelated to religion, and its profits from the childcare business at the subject property are far from incidental.

40. The Church nonetheless asks us to impute its religious purpose to PHLP and PLC. For support, it points to (1) Maxwell's Christian beliefs, which align with the Church's doctrine; (2) the fact that the only childcare operation that PLC has run is the Learning Place; (3) the covenants from sections 5.1 and 27 of the prime lease; (4) the religious prayers, songs, stories, and other faith-based learning tools that permeate the daily and weekly activities at the property, and (5) PLC's advertising materials, which partly highlight The Learning Place's focus on Christianity and its connection to the Church.

41. We give little weight to Maxwell's personal religious beliefs. She does not occupy and use the facility—PLC does. As the Tax Court has observed, "one of the hallmarks of Anglo-American law is the status of a corporation as a distinct legal entity." *St. Mary's Bldg. Corp. v. Redman*, 135 N.E.3d 681, 687 (Ind. Tax Ct. 2019). For taxation purposes, a corporation is separate and distinct from its shareholders. *Id.* PLC's organizational documents say nothing about a religious purpose. In any case, Maxwell is engaged in the larger business of running childcare and related operations, both secular and religious. While PLC has only operated at the subject property, it is still part of that larger business, as evidenced by the fact that Eagle handles staff training, discipline, and various human-resource matters at both Advantage's and PLC's locations, and that it rents parking

facilities, and playing fields from 329 Coldwater, LLC, yet another for-profit entity that Maxwell owns.


42. As for the lease covenants, while they further the Church's underlying purposes in owning the property, they also reflect conditions to which PLC needed to agree in order to operate its business at the facility. They do not conflict with PHLP's or PLC's dominant profit motive. For example, although Section 5.1 restricted the entities to which the facility could be subleased, PHLP charged market rates on the few occasions it rented the facility out to other churches. The same may be said for PLC's inclusion of religious content in the daily and weekly activities it provided for the children in its care and for the advertising materials that highlighted The Learning Place's connection to the Church. Those things were conditions of PLC operating its business at the facility.
43. In those respects, this appeal mirrors *Tipton Cty. Health Care Found.* In that case, the Tipton County Memorial Hospital had owned an assisted-living facility and operated it with the assistance of Miller's Health System's Inc., a for-profit nursing home operator. *Tipton Cty. Health Care Found.*, 961 N.E.2d at 1049. The hospital later sold the property to Tipton County Healthcare Foundation, which then leased the property to Miller's. Miller's in turn agreed to use the property as an assisted-living facility. *Id.*
44. The Court affirmed our determination denying the Foundation an exemption on grounds that Miller's did not have a charitable purpose. Among other things, the Foundation argued that lease provisions under which Miller's had agreed to operate the property solely as an assisted-living facility and to maintain the facility's licenses for that use showed that Miller's had a charitable purpose. *Id.* at 1053. The Court disagreed, explaining that the lease seemed "like another example of a commercial triple-net lease," and that the provisions indicated how Miller's would use the facility during its tenancy, not that its overall goal or purpose for using the property was charitable. *Id.*

45. Like the triple-net lease in *Tipton Cty. Health Care*, both the prime lease and sublease in this appeal are examples of commercial triple-net leases. Much like Miller's agreed to operate the Foundation's property as an assisted-living facility, PLC agreed to run a childcare operation at the subject property in a way that aligned with the Church's religious goals. Agreeing to such landlord-imposed conditions, however, does not impute the landlord's exempt purpose to the tenant.
46. Another way to look at this appeal is as a photographic negative of *Oaken Bucket*, where the Indiana Supreme Court held that a landlord who rented part of its office building to a church failed to show that the landlord owned the property for an exempt purpose. *Oaken Bucket* 938 N.E.2d at 658-60. As the Court explained, absent evidence that an owner of leased property has an exempt purpose "separate and distinct from the exempt purpose of its lessee," it "holds the property for its own benefit, not that of the public" and therefore fails to qualify for an exemption. *Id.* at 659. Just as an owner cannot rely on its tenant's exempt purpose, PLC, as a tenant, cannot rely on the Church's exempt purpose as the property's owner.
47. As with all exemption appeals, we base our determination on the specific facts of this case. We do not address whether the Church would have been entitled to an exemption had it continued to occupy and use the property and simply paid PLC a reasonable management fee to help run its childcare ministry.
48. The Church lastly argues that its decision to lease (and sublease) the property to PHLP and PLC did not functionally differ from what it had done before 2012. We disagree. The Church chose to lease out the property in order to avoid liability to third parties and to shift the risk of profit and loss to Maxwell and her companies. We do not question that decision; it was entirely the Church's to make. The law provides different ways to structure transactions and relationships. But they come with both benefits and drawbacks. The Church was free to attempt to minimize risk by having legally distinct for-profit entities occupy the property and run the childcare operation. But we cannot

ignore those distinctions when considering a property's eligibility for an exemption. The Church leased out its commercial building to a childcare company that subleased it to another, and neither company has established a religious purpose of its own.

VI. Conclusion

49. Although the Church may have owned the subject property for a religious purpose, we find that PLC had a dominant commercial motive, rather than a religious purpose, in occupying and using the property. We therefore determine that the subject property was not entitled to an exemption for the 2021 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 of 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>.