

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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EDGEWOOD COMMUNITY CHURCH, INC.,

DOCKET NO. 19-T-024

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**RULING AND ORDER**

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**ELIZABETH KESSLER, COMMISSIONER:**

This case comes before the Commission for decision on Cross-Motions for Summary Judgment. The Petitioner, Edgewood Community Church, Inc., is represented by Vande Zande & Kaufman, LLP, and Attorney Daniel L. Vande Zande. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney James W. McNeilly, Jr. Both parties have filed materials in support of their respective positions. We grant summary judgment to the Department as we find that the Petitioner failed to follow the statutory requirements for conversion from one form of business entity to another and the transfer at issue was, therefore, ineligible for exemption from the real estate transfer fee pursuant to Wis. Stat. § 77.25(6m).

## FACTS

1. Edgewood Community Church was at all times material hereto a Wisconsin unincorporated association, with offices and its principal place of business located at 201 Edgewood Drive, Waupun, Wisconsin. (Joint Stipulation of Facts (“Jt. Stip.”), ¶ 6.)

2. While operating as an unincorporated association, Edgewood Community Church acquired title to real estate in the City of Waupun, which was titled to “Edgewood Community Church.” (Jt. Stip. ¶ 7.)

3. In 2016, the Board of Elders of Edgewood Community Church authorized the conversion of the unincorporated “Edgewood Community Church” into a non-profit corporate entity. (Jt. Stip. ¶ 10.)

4. On December 9, 2016, the Petitioner filed Articles of Incorporation with the Wisconsin Department of Financial Institutions, establishing Edgewood Community Church, Inc., as a non-profit corporation pursuant to Chapter 181 of the Wisconsin Statutes. (Jt. Stip. ¶ 11, Ex. 6.)

5. As part of the incorporation process, all members of Edgewood Community Church were approved as members of Edgewood Community Church, Inc., and the Board of Elders of Edgewood Community Church were designated as the Board of Directors of Edgewood Community Church, Inc. (Jt. Stip. ¶ 12.)

6. As part of the incorporation process, all assets of Edgewood Community Church were transferred without consideration to Edgewood Community Church, Inc. (Jt. Stip. ¶ 13.)

7. No certificate of conversion was filed with the Wisconsin Department of Financial Institutions for the conversion of the unincorporated association Edgewood Community Church to Edgewood Community Church, Inc., under the provisions of Wis. Stats. §§ 180.1161, 181.1161, 183.1207, or otherwise. (Jt. Stip. ¶ 17.)

8. On or about October 16, 2017, an eRETR was filed with the Fond du Lac County Register of Deeds, reporting the October 16, 2017 conveyance of real estate from the Grantor, Edgewood Community Church, to the Grantee, Edgewood Community Church, Inc., via quit claim deed. The property conveyed consisted of four parcels, WPN-14-15-99-OV-084-01, WPN-14-15-32-08-001-00, WPN-14-15-99-CL-100-00, and FDL-15-17-09-43-511-00, with a total land and improvement value of \$818,400. (Jt. Stip. ¶ 1, Ex. 1, pp. 1-2.)

9. On or about September 20, 2018, the Department issued a Notice of Additional Assessment of Real Estate Transfer Fee in the total amount of \$3,391.07, including interest and penalty, to Grantor, Edgewood Community Church. (Jt. Stip. ¶ 2, Ex. 2.)

10. Petitioner timely requested a redetermination, which the Department denied on or about December 5, 2018. (Jt. Stip. ¶¶ 3-4, Exs. 3-4.)

11. Petitioner timely filed a Petition for Review with the Commission on February 4, 2019. (Commission file.)

## APPLICABLE LAW

### *Relevant Statutes*

Wis. Stat. § 77.25(6m): Exemptions from fee.

The fees imposed by this subchapter do not apply to a conveyance ... pursuant to the conversion of a business entity to another form of business entity under s. 178.1141, 179.76, 180.1161, 181.1161, or 183.1207, if, after the conversion, the ownership interests in the new entity are identical with the ownership interests in the original entity immediately preceding the conversion.

Wis. Stat. §§ 180.1161: Conversion.

(1)(a) A domestic corporation may convert to another form of business entity if it satisfies the requirements under this section and if the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the business entity into which the domestic corporation is converting.

(1)(b) In addition to satisfying any applicable legal requirements of the jurisdiction that governs the organization of the business entity into which the domestic corporation is converting and that relate to the submission and approval of a plan of conversion, the domestic corporation shall comply with the procedures that govern a plan of merger under s. 180.1103 for the submission and approval of a plan of conversion.

(2)(a) A business entity other than a domestic corporation may convert to a domestic corporation if it satisfies the requirements under this section and if the conversion is permitted under the applicable law of the jurisdiction that governs the business entity.

(2)(b) A business entity converting into a domestic corporation shall comply with the procedures that govern the submission and approval of a plan of conversion of the jurisdiction that governs the business entity.

### *Summary Judgment*

Summary judgment is granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, show there is no

genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2). Here, the parties have stipulated to the material facts and have both moved for summary judgment. The effect of simultaneous motions for summary judgment is an assertion that the facts presented are not in dispute and only questions of law remain for determination. *Healthcare Services, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-085 (WTAC 2016).

### *Burden of Proof*

The Department's determinations are presumed to be correct, and it is Petitioner's burden to prove by clear and convincing evidence that the Department erred in its determination. *Puissant v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984).

### ANALYSIS

It is plain to see that the intent of the unincorporated association, Edgewood Community Church, was to become a formal non-profit corporation under Wisconsin law. Unfortunately for the Petitioner, the process of converting an existing entity, even if organized only informally, is distinct from the process of incorporating the business.

The Petitioner argues that it met the requirements to convert from one form of business entity to another when the members of Edgewood Community Church created the entity Edgewood Community Church, Inc. However, based upon the stipulated facts, the Petitioner fails to show that it followed the statutory procedures, outlined in Wis. Stat. § 181.1161, required to convert from one form of business entity to

another. Even if the Petitioner is correct, that the "essence" of the conversion exemption is the continuity of ownership interests between the original and subsequent business entity after conversion, that does not absolve the Petitioner from following the statutory requirements. The language of Wis. Stat. § 181.1161 includes multiple repetitions of the phrase "shall comply with the procedures," making it clear that the legislature intended to require specific actions on the part of entities engaging in the conversion process.

The transfer fee exemption in Wis. Stat. § 77.25(6m) applies to those business entities which have properly complied with those (or other specified) statutory requirements to convert from one form of business entity to another. Here, the Petitioner failed to complete the specific requirements of the Wis. Stat. § 181.1161 conversion process.

Having failed to comply with the statutory requirements for converting from one business entity to another, Petitioner does not qualify for an exemption from the real estate transfer fee under Wis. Stat. § 77.25(6m).

#### **CONCLUSION OF LAW**

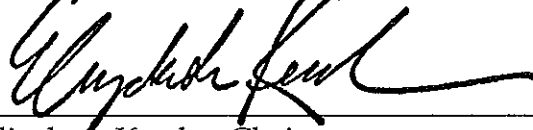
Because Petitioner failed to comply with the requirement of filing a certificate of conversion with the Department of Financial Institutions pursuant to Wis. Stat. § 181.1161, the transfer at issue is not exempt under Wis. Stat. § 77.25(6m), and, therefore, the transfer of property from Edgewood Community Church to Edgewood Community Church, Inc., is subject to the real estate transfer fee.

#### **ORDER**

The Department's Motion for Summary Judgment is granted, and the Petitioner's Motion for Summary Judgment is denied.

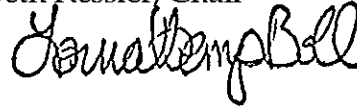
Dated at Madison, Wisconsin, this 22<sup>nd</sup> day of April, 2020.

WISCONSIN TAX APPEALS COMMISSION



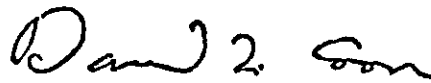
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Elizabeth Kessler, Chair



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Lorna Hemp Boll, Commissioner



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David L. Coon, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION  
5005 University Avenue - Suite 110  
Madison, Wisconsin 53705

**NOTICE OF APPEAL INFORMATION**

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

***Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION***

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

**AND/OR**

***Option 2: PETITION FOR JUDICIAL REVIEW***

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.