
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

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|------------------------------|---|-----------------------------------|
| Portage Moose Lodge #1900 |) | Petition No.: 64-016-06-2-8-00001 |
| |) | |
| Petitioner, |) | |
| |) | Parcel: 08-00001236 |
| v. |) | |
| |) | |
| Porter County Property Tax |) | County: Porter |
| Assessment Board of Appeals, |) | Township: Portage |
| |) | Assessment Year: 2006 |
| Respondent. |) | |

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

June 15, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on whether the Petitioner's real and personal property is exempt from taxation under Ind. Code § 6-1.1-10-16.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. Michael Havrilla, Administrator of Portage Moose Lodge #1900 (the Lodge), filed an Application for Property Tax Exemption (Form 136) for real and personal property for the 2006 assessment year on May 12, 2006. The Porter County Property Tax Assessment

Board of Appeals (PTABOA) issued its determination denying the request for exemption and finding the real and personal property 100% taxable on August 21, 2006.

2. Pursuant to Ind. Code § 6-1.1-11-7, the Lodge filed a Form 132 Petition for Review of Exemption on September 18, 2006, petitioning the Board to conduct an administrative review of the PTABOA determination.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on April 17, 2007, in Valparaiso, Indiana.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Larry W. Young, Governor of the Lodge,

For the Respondent:

John R. Scott, Porter County Assessor,
Susanna Villaruel, Deputy County Assessor,
Shirley LaFever, Chief Deputy County Assessor,
Janine A. Chrisman, President, Porter County PTABOA.

5. The Petitioner and the Respondent did not submit any exhibits.
6. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The 132 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
 - Board Exhibit D – Hearing sign in sheet.
7. The subject property is the real estate and personal property located at 3083 County Line Road, in Portage, Indiana.

8. The ALJ did not conduct an on-site inspection of the subject property.
9. For 2006, the Porter County PTABOA determined the property to be 100% taxable. The Petitioner contends the property should be 100% non-taxable.

JURISDICTIONAL FRAMEWORK

10. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; 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). The Board has jurisdiction over this matter because it is a request for an exemption. All appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

11. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
12. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
13. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*,

803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

Basis of Exemption and Burden

14. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Article 10, § 1 of the Constitution of Indiana. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.
15. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. These government 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 it would have paid to other parcels that are not exempt. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E. 2d 218 (Ind. Tax Ct.1996).
16. Worthwhile activities or noble purpose alone is not enough for tax exemption. 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 Bd. of Tax Comm'rs*, 550 N.E. 2d 850, 854 (Ind. Tax Ct.1990)).
17. 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. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel, v. State Bd. of Tax Comm'rs*, 611 N.E. 2d at 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E. 2d 936, 938 (Ind. Tax Ct.1987).

Petitioner's Contentions

18. The Petitioner contends the property should be exempt under Ind. Code § 6-1.1-10-16.
19. The Petitioner presented the following testimony in regard to this issue:
 - A. The Petitioner contends the property is a house, which the Lodge uses for administrative offices on a daily basis and for meetings. *Young testimony.*
 - B. The Petitioner's witness testified that the Lodge raises money to support an orphanage. *Young testimony.* According to Mr. Young, the Lodge also donates money and food to various local charities and raised money for victims of Hurricane Katrina. *Id.*

Respondent's Contentions

20. The Respondent agreed the property was 100% exempt and that the reason the PTABOA denied the exemption was because the Petitioner failed to appear at the PTABOA hearing. *Scott testimony; Chrisman testimony.*

SUMMARY OF FINAL DETERMINATION

21. The Petitioner contends that its property should be exempt because it is used for charitable purposes.
22. Exemption statutes are strictly construed against the taxpayer. The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *See New Castle Lodge # 147, Loyal Order of Moose, Inc. v. State Bd. of Tax Comm'rs*, 733 N.E.2d 36, 38 (Ind. Tax Ct. 2000), *aff'd*, 765 N.E.2d 1257 (Ind. 2002). Despite this, "the term 'charitable purpose' is to be defined and understood in its broadest constitutional sense." *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d

177, 182 (Ind. Tax Ct. 2005)(citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 251 N.E.2d 673, 682 (1969). As a result, “[a] charitable purpose will generally be found to exist 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 of a benefit that will inure to the public by the accomplishment of such acts.” *Id.* (quoting *Indianapolis Elks*, 251 N.E.2d at 683).

23. The test used to determine whether all or a portion of a subject property qualifies for an exemption for charitable purposes, is the “predominant use” test. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Ind. Code § 6-1.1-10-36.3(a) states that “property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.” Ind. Code § 6-1.1-10-36.3(c) further provides that “[p]roperty is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property 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 stated 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.” Ind. Code § 6-1.1-10-36.3(c)(3).

24. The use of property by a nonprofit entity does not establish any inherent right to exemption. *See Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996). Further, while charitable giving may serve as evidence to support a claim of charitable use, the statutory test, however, is the predominant use of the property, not the distribution of income for charitable purposes. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d at 1263. Moreover, “[t]he declaration of charity by an organization does not necessarily mean that the

dominant use of the organization's property is of the form of charity which the law recognizes as entitling an organization to tax exemption." *Sahara Grotto v. State Board of Tax Commissioners*, 261 N.E.2d 873, 878 (1970).

25. In order to qualify for an exemption, the owner must submit probative evidence that the property is owned for an exempt purpose, used for an exempt purpose, and occupied for an exempt purpose. Once these three elements are met, the property can be exempt from taxation. *Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005). A taxpayer must present more than anecdotal type information to prove that property is entitled to an exemption. The onus is on taxpayers to produce detailed facility usage reports with supporting documentation of exempt use. *State Board of Tax Commissioners v. New Castle Lodge*, 765 N.E.2d 1257, 1264 (Ind. 2002).

26. Here, although the Petitioner offered testimony that some charitable activities occur such as fundraising events, the Petitioner provided no breakdown of the time spent on such charitable activities and the time spent on other social or Lodge-related activities. Thus, the Board could not determine that the property's predominant use is charitable or grant any exemption. The parties, however, agree that the property is exempt. The Board, therefore, accepts the parties' settlement.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.