

**STATE OF INDIANA
Board of Tax Review**

GRACE FELLOWSHIP CHRISTIAN)	On Appeal from the Lake County
CENTER, INC.,)	Board of Review
Petitioner,)	
)	
v.)	Petition for Review of Assessment
)	Form 132
LAKE COUNTY BOARD OF REVIEW,)	Petition No. 45-001-92-2-8-00046
)	Parcel Nos. 39-22-41
Respondent.)	39-399-15

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether the land and improvements owned by Grace Fellowship Christian Center, Inc. qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for religious purposes.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, Grace Fellowship Christian Center (Grace Fellowship) filed an application for property tax exemption for two separate parcels of property with the Lake County Board of Review (BOR) on June 28, 1992. The BOR denied the applications on January 27, 1993, and gave Grace Fellowship proper notice of denial.
3. Pursuant to Ind. Code § 6-1.1-11-7, Grace Fellowship filed a Form 132 petition seeking a review of the BOR action by the State. The Form 132 petition was filed February 19, 1993.
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 12, 1996, before Hearing Officer Dave Stephani. Testimony and exhibits were received into evidence. Rev. Mark J. Wachtstetter, pastor of Grace Fellowship, Rev. Clara Jeanette Turner of C.J. Turner Singers & Ministry, and Patrick B. McEuen, attorney, represented Grace Fellowship. Thomas O'Keefe, Lake County Deputy Assessor, and Bonnie Sell of the Lake County Assessor's Office represented the BOR.
5. At the hearing, the subject Form 132 petition and attachments were made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following items were received into evidence:
 - Petitioner Exhibit 1 – Purchase agreement for subject property.
 - Petitioner Exhibit 2 – Title insurance.
 - Petitioner Exhibit 3 – Contract for sale of subject property.
 - Petitioner Exhibit 4 – Agreement to assume contract for purchase.
 - Petitioner Exhibit 5 – Articles of Incorporation for C.J. Turner Singers & Ministry, Inc.
 - Petitioner Exhibit 6 – Photograph of subject property.
 - Petitioner Exhibit 7 – Photograph of subject property.
 - Petitioner Exhibit 8 – Photograph of subject property.

Petitioner Exhibit 9 – Receipt for donation of miniature golf course.

Petitioner Exhibit 10 – Articles of Incorporation for Grace Fellowship.

Petitioner Exhibit 11 – Report for Indiana Non-Profit Corporation.

Petitioner Exhibit 12 – Affidavit from Mark Wachtstetter and letter from
Lake County BOR.

Petitioner Exhibit 13 – Notice of expiration of exemption.

Petitioner Exhibit 14 – Grace Fellowship statement of purpose and faith.

Petitioner Exhibit 15 – Certificate of Ordination for Rev. Clara Jeanette
Turner.

Petitioner Exhibit 16 – Charter & certificate of affiliation for C.J. Turner
Singers & Ministry, Inc.

Petitioner Exhibit 17 – Flyer for a convention.

Petitioner Exhibit 18 – Financial records for November and December
1992.

6. The subject property is located at 3910 West 47th Avenue in Gary, Indiana, Lake County, Calumet Township. Exemption is sought for the assessment year 1992 with taxes due and payable in 1993.
7. The Hearing Officer did not view the property.
8. Grace Fellowship is an Indiana not-for-profit corporation organized for religious purposes. (Petitioner Exhibits 10 & 11). The subject property was purchased by Grace Fellowship on November 4, 1991, to be used for worship and education. Upon further inspection of the building by the petitioner, it was discovered that the renovation and remodeling needed was far more extensive than previously thought, and that the building was currently unfit for its intended use.
9. While money was being raised for renovation, a portion of the building was used as a second-hand shop. On February 7, 1992, the subject property was sold to C.J. Turner Singers & Ministry, which is also an Indiana not-for profit corporation organized for a religious purpose. (Petitioner Exhibit 5). According to various

provisions of the contract for sale, Grace Fellowship retains title until the full purchase price (plus interest) is paid.

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Burden In General

2. The courts have long recognized that in the administrative review process, the State is clothed with quasi-judicial power and the actions of the State are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State has the ability to decide the administrative appeal based upon the evidence presented.
3. In reviewing the actions of the County Board (or PTABOA), the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816,820 (Ind. Tax 1995).
4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State Board is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

5. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
6. If the taxpayer is not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
7. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
8. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.

B. Constitutional and Statutory Basis for Exemption

9. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
10. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, exemption is claimed under Ind. Code § 6-1.1-10-16 which provides that all or

part of a building is exempt from property taxes if it is owned, occupied, and used for religious purposes.

11. For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

C. Basis of Exemption and Burden

12. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
13. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).
14. Strict construction construes exemption from the concept of the taxpayer citizen. All property receives protection, security and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support - - taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E. 2d 218 (Ind. Tax 1996. Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
15. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *National Association of Miniature Enthusiasts*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in*

Christ v. State Board of Tax Commissioners, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).

16. 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 statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

17. The term “religious” generally has reference to man’s relationship and belief in a supernatural or superhuman being that exercises power over human beings by imposing rules of conduct with future rewards and punishments. See *City Chapel Evangelical Free Inc. v. City of South Bend*, 744 N.E. 2d 443 (Ind. 2001)(“worship” is the act of paying divine honors to the Supreme Being); *Grutka v. Clifford*, 445 N.E. 2d 1015 (Ind. App. 1983)(ecclesiastical matters are those which concern doctrine, creed, or form of worship of the church); *Minersville School District v. Gobitis*, 108 F. 2d 683 (3d Cir. 1939); *McMasters v. State of Oklahoma*, 21 Okla. Crim. 318, 207 P. 566 (Okla. Crim. App. 1922).

D. Conclusions Regarding the Exemption Claim

18. Grace Fellowship appeals for exempt status under Ind. Code § 6-1.1-10-16, religious purpose. The Lake County BOR originally denied exemption because Grace Fellowship was not actively using or occupying the subject property, and the BOR mistakenly believed that the statute required a property to be owned, used, and occupied by the same entity to be exempt.

19. There need not be unity of ownership, occupation, and use for a property to be exempt, under *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954 (Ind. Tax 1997). Rather, the test is whether a property is owned

for an exempt purpose, used for an exempt purpose, and occupied for an exempt purpose, not necessarily by the same entity.

20. At the time, the property was being used by C.J. Turner Singers & Ministry, Inc., another Indiana non-profit organization, for furtherance of its stated religious purpose. Therefore, they were using and occupying the subject property for an exempt purpose. At the same time, Grace Fellowship owned the property for furtherance of a religious purpose.
21. Given the above, even though Grace Fellowship was the titleholder at the time of assessment, Turner was using and occupying the property in furtherance of an exempt (religious) purpose. Therefore, the subject property is owned, used, and occupied for religious purposes.
22. As such, Grace Fellowship has met its burden regarding its exemption request. Grace Fellowship has shown that the subject property falls specifically within Indiana Code 6-1.1-10-16, and therefore, the subject property is 100% exempt from property taxation.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review