

SAM E. BORDEN AND DAVID L. HEADY, Pro Se

DEBORAH J. LEWIS, Vigo County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

SYCAMORE COUNTRY CLUB, INC.,)	Petition No. 84-002-10-2-8-00006
)	
Petitioner,)	Parcel No. 84-06-25-127-013.000-002
)	
v.)	Vigo County
)	
VIGO COUNTY ASSESSOR,)	Harrison Township
)	
Respondent.)	2010 Assessment

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

August 12, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

Should the subject property be granted an exemption for 2010 under Ind. Code §6-1.1-10-16 because the property was predominantly used for charitable purposes, or under Ind. Code §6-1.1-10-23 because the property was exclusively used as a fraternal benefit association?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is a concrete block building and the meeting facility for Sycamore Country Club members. The property is located at 200 Heritage Drive in Terre Haute, Vigo County.
2. The Petitioner filed an Application for Property Tax Exemption, Form 136, with the Vigo County Assessor on February 10, 2010. The Application claimed both the real and personal property should be 100% exempt.
3. On August 31, 2010, the Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued a determination that the real property is 100% taxable. The personal property was not listed on the Notice of Action on Exemption Application. The PTABOA denied tax exempt status because Petitioner did not fall under the specific purpose for which Petitioner based its claim for exemption. Petitioner claimed to be a fraternal benefit association under Ind. Code §6-1.1-10-23. According to the Notice of Action on Exemption Application, the 2010 total assessed value of the land is \$36,800. The 2010 assessed value of the improvement is \$116,000. This comes to a total assessed value of \$152,800.
4. On September 27, 2010, the Petitioner filed a Petition for Review of Exemption, Form 132, seeking the Board's review of that determination.
5. The Board's designated Administrative Law Judge, Jaime S. Harris, held a hearing on May 14, 2013. She did not conduct an on-site inspection of the property.
6. Board member Sam E. Borden and Treasurer of the Sycamore Country Club David L. Heady were sworn as witnesses for the Petitioner. Vigo County Assessor Deborah J. Lewis and Chief Deputy Assessor Susan McCarty were sworn as witnesses for the Respondent.
7. The Petitioner presented the following exhibit:
Exhibit 1 – Revenue Comparison grid.

8. The Respondent presented the following exhibits:
- Exhibit 1 – Form 136 – Petitioner’s Application for Property Tax Exemption,
 - Exhibit 2 – I.C. §6-1.1-10-23 Fraternal Benefit Associations,
 - Exhibit 3 – I.C. §27-11-1-1 Application of article,
 - Exhibit 4 – I.C. §27-11-2-3 Operation for benefit of members and beneficiaries,
 - Exhibit 5 – I.C. §27-11-6-1 Contractual benefits,
 - Exhibit 6 – IBTR Final Determination – *Local Union No. 871 v. LaGrange County Assessor*,
 - Exhibit 7 – IBTR Final Determination – *Local Union 414 v. Allen County Assessor*.
9. The following additional items are recognized as part of the record:
- Board Exhibit A – Notice of Hearing,
 - Board Exhibit B – Petition for Review (Form 132),
 - Board Exhibit C – Hearing Sign-In Sheet.

OBJECTION

10. Assessor Lewis made a formal objection to any testimony and evidence that was presented in reference to the Petitioner receiving an exemption on the basis of serving a charitable purpose. Ms. Lewis stated that she did not come prepared to talk about charitable because the Form 132 and the original Form 136 specifically stated that the exemption was claimed under Ind. Code §6-1.1-10-23, which is fraternal benefit association. Until the day of the hearing, Petitioner never claimed an exemption based on serving a charitable purpose.
11. The objection is sustained. Even if the Board allowed the charitable evidence to be considered, the Board still would not grant the exemption based on Petitioner serving a charitable purpose.

SUMMARY OF THE PETITIONER’S CASE

12. The Petitioner contends on the Form 136 Application for Property Tax Exemption that its property is exempt from taxation pursuant to Ind. Code §6-1.1-10-23 as a fraternal benefit association. The Petitioner’s contention at the hearing, however, was that its property is exempt from taxation pursuant to Ind. Code §6-1.1-10-16 as a charitable entity. *Borden testimony*.

13. The objects and purposes of the club are to associate its members together in an organized body for the purpose of social intercourse, interchange of thought, and intellectual improvement, to promote social relations among its members, and to provide means of amusement, recreation, and entertainment. *Borden testimony.*
14. Board member Sam E. Borden testified that the club was started in 1903 and officially incorporated in 1919. The Articles of Incorporation were amended in 1948. The subject property is basically a meeting place for members and their friends to socialize, play cards, and have parties. Members are charged an annual fee of \$150. The purpose of this charge is to offset the club's overhead. *Borden testimony.*
15. The subject property had been tax exempt since the club was originated until 2006. This means that the Petitioner's property was tax exempt for approximately 100 years. The very creation of the club from its inception was for a charitable purpose. The first page of Petitioner's constitution and bylaws states that should the club ever be disbanded, everything in the club is to be given to a charitable organization for disposition. In other words, no one in Petitioner's club can receive financial gain because whatever assets the club has when it is dissolved should go to a charitable organization according to its constitution. *Borden testimony.*
16. Although Mr. Borden and his wife have belonged to *true* country clubs in the past, they are active with Petitioner because this club represents people from many socioeconomic backgrounds. There are club members who are strictly supported by social security alone. There are also members, like Mr. Borden himself, who are more fortunate. There is a great mix of all types of people, and this is what Mr. Borden considers to be Petitioner's big advantage over a typical country club. *Borden testimony.*
17. Petitioner is a 501(c)(7) organization, which is a social and recreational club designation. The club was classified in 1947. Club members have considered changing the bylaws to be more of a 501(c)(3), which is a charitable organization. The Board members did not have to think about what type of organization the club actually is until the county started treating them as a taxable entity. *Borden testimony.*

18. Petitioner's club consists of primarily older people who have retired. The average age is probably about 62 or 63. Members consist of all different classes of people from deputies to construction workers. The club's activities consist of providing a place for people to play cards and socialize. Nonmembers may come into the facility with club members. Coffee is provided for free. The club has parties and donates any leftover food from these parties to charity. There is a bar that loses money every year, because most of the card players and others that come to the club do not drink that much. The membership dues and the bar are the only two sources of income at the club. The club does not increase bar prices or dues because older members are on fixed incomes. *Borden testimony; Pet. Ex. 1.*
19. The evaluation of whether a property is owned, occupied or predominately used for an exempt purpose is a fact sensitive inquiry. There is no bright-line test. *National Federation of Music Clubs v. Johnson County Assessor*, Petition No. 41-041-09-2-8-00008 (June 1, 2011). It is up to Petitioner to explain why the club should be exempt. *Borden testimony.*
20. Exemption statutes are strictly construed against the taxpayer. A charitable purpose will generally be found to exist if there is evidence of relief of human want manifested by obviously charitable acts different from everyday purposes and activities of man in general. *Knox County Association of Retarded Citizens, Inc. v. Knox County Assessor*, Petition No. 42-027-11-2-8-00002 (February 19, 2013). The benefit Petitioner's club provides that would not be provided by someone else is providing a place for people to play card games such as bridge, euchre, and pinochle. There are various ladies' organizations such as church groups that meet at the property for lunch and to play cards. These women's groups are predominately not club members, but they are not charged to use the facilities. If a club member sponsors the group, the club will do what they can to provide for them. These outside groups use the property approximately four to six times per month. Petitioner provides social services and fosters an atmosphere of fraternity and good fellowship. *FAFH-Affordable Housing, Inc. v. Marion County Assessor*, Petition No. 49-601-08-2-8-00001 (February 10, 2012). *Borden testimony.*
21. Petitioner had a charitable gaming license in order to provide pull tabs for guests. Two years ago, the Indiana Gaming Commission informed the club that they were not going

to renew the club's license. Mr. Borden believes the license was taken away because the club is now considered a taxable entity. The loss of the gaming license has caused the club to lose money and may lead to a necessary dues increase. There is no longer any excess cash, however, because property taxes now take approximately \$5000 a year. If the club did have excess cash, it would be contributed to charitable organizations. *Borden testimony; Heady testimony.*

22. One way for Petitioner to meet the budget would be to increase the number of members. The club is currently up to about 277 members, but the bylaws state the maximum amount of members is to be 250. That number excludes past presidents and those who have been active members of the club for over 16 years. It is difficult to increase the amount of members because the club consists mostly of older individuals and tends to lose several people per year due to their age. Another option the club has is to rent the facility to outside parties or club members, for example, for wedding receptions. For outside parties, the room is \$400 to rent for an afternoon or evening. For club members, the price is \$200. The club has cooking facilities and offers to cater when outside parties rent the building. Club members donate their time, buy food, and charge a \$10 to \$15 fee depending on what type of food is requested. As stated previously, any excess food is donated to charities such as the St. Vincent Food Kitchen. On average, the non-member parties likely occurred two or three times a month in 2010. *Borden testimony; Heady testimony.*
23. Up until the last four years, the subject property was consistently recognized by assessing authorities as tax exempt. The county ignored the long history that demonstrates that the subject property is exempt from property taxes under Ind. Code §6-1.1-10-16 because of the charitable usage of the property. *Borden testimony.*
24. According to David Heady, the subject property should be exempt because it is a fraternal benefit association. Consistent with the club's bylaws, the members get together for social intercourse, meeting other people and just socializing. Even though Petitioner is not necessarily a fraternal association based on the fact that it is not nationally known and has no national affiliation, the members still feel that they qualify for an exemption because the club is more or less a building where people come to congregate and play cards. The purpose of

the club is by no means to make a profit. If any money is taken away for taxes, the club will have to find other methods to generate money to keep the doors open. *Borden testimony; Heady testimony.*

25. One of the club's Board members was responsible for filing the 2010 Application for Property Tax Exemption at issue in this case. When filling out the boxes on the Applications, the club member checked "fraternal benefit association" as opposed to checking "charitable" for the purpose for which the claim for exemption was based. Since the Petitioner's club had only recently been found to be a taxable entity, the club's Board members were not sure how to complete the application or which purpose to claim for the exemption. *Borden testimony; Heady testimony.*

SUMMARY OF THE RESPONDENT'S CASE

26. The only purpose stated on Petitioner's Form 136 Application for Exemption was "[f]raternal- I.C. 6-1.1-10-23." A charitable purpose was not claimed on the application. The county reviewed the application and denied it on the basis that the purpose stated did not qualify the entity for tax exemption in 2010. On the Form 132 Petition to the Board for Review of Exemption, the Petitioner once again checked only the box for Fraternal Benefit Association. A charitable purpose was not claimed until the day of the hearing. Since Respondent came to the hearing prepared to argue against the only purpose actually stated on the Petition, the Petitioner should not be allowed to argue for a charitable purpose. *Lewis testimony; Resp't. Ex. 1; Bd. Ex. A.*
27. Petitioner's Application for Property Tax Exemption contradicts the testimony of Petitioner's witnesses at the hearing. First, in section three on the second page of the application there is a question that asks the following: "[A]re rooms or areas ever used by individuals or groups for purposes not related to the claimed exempt use?" Secondly, there is a question that asks whether those benefiting from the exempt activities ever use areas not directly related to the activity of the taxpayer. Petitioner answered both questions in the negative. But Petitioner's witness testified at the hearing that other people besides club members rent out the building. Other entities besides the Club use the subject property. Another question on the Application

asks if the individuals whose activities are related to the exempt purpose ever use them for activities not related to the basis of the claimed exemption. Petitioner answered this question in the negative as well. Mr. Borden, however, testified that club members rent the facility for \$200 a day for their own personal use. Mr. Borden did admit on the Application that occasionally fees are charged to those who use rooms or areas, that rooms are sometimes used for income generating activities, and that food or other items are sometimes sold at the property. Nothing on the Application, however, indicated that the property was open to the public in general. Instead, the Application indicated that all of the instances involving fees were specifically club activities for members only. *Lewis testimony; Resp't. Ex. 1.*

28. The Petitioner's property does not qualify for an exemption under Ind. Code §6-1.1-10-23(b). Pursuant to Ind. Code §6-1.1-10-23(b), the fraternal benefit associations exemption does not apply to real property unless it is occupied and *exclusively* used by the association in carrying out the purpose for which it was incorporated, organized, or licensed. According to Petitioner's witnesses, the subject property is not used exclusively by the club members. Therefore, the club property does not qualify under the fraternal benefit association statute. *Lewis testimony; Resp't. Ex. 2.*
29. Indiana Code §27-11-1-1 states that the "article applies to any incorporated society, order, or supreme lodge without capital stock, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not-for-profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and that provides benefits in accordance with this article." This means that when discussing fraternal benefit societies under Ind. Code §6-1.1-10-23, we are not talking about fraternities or sororities. It is also not referencing fraternal organizations such as the Moose and Elks organizations. This is a different kind of animal. It is operated on a lodge system, and more importantly, it provides benefits to its members. *Lewis testimony; Resp't. Ex. 3.*
30. Indiana Code §27-11-2-3 states the following:

"Sec. 3. A society shall operate for the benefit of members and their beneficiaries by:

- (1) Providing benefits as specified in IC 27-11-6-1; and
- (2) Operating for one (1) or more social, intellectual, educational, charitable, benevolent, moral, fraternal patriotic, or religious purposes for the benefit of its

members that may also be extended to others. These purposes may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.”

Lewis testimony; Resp't. Ex. 4.

31. The following is a list of the contractual benefits specified in Ind. Code §27-11-6-1:
 - a. Death benefits;
 - b. Endowment benefits;
 - c. Annuity benefits;
 - d. Temporary or permanent disability benefits;
 - e. Hospital, medical, or nursing benefits;
 - f. Monument or tombstone benefits to the memory of deceased members; and
 - g. Such other benefits as authorized for life insurers and that are not inconsistent with this chapter.

In order to obtain the fraternal benefit association exemption, the Petitioner’s club must provide these benefits to their members. None of the above listed benefits are provided by Petitioner’s club. *Lewis testimony; Resp't. Ex. 5.*

32. Under the Indiana Code, a fraternal benefit association is required to have a specific process in place to elect its members and to elect its board of directors and governors. Another requirement is that the organization operates under a lodge system or ritualistic form of work. Nothing in any previous filings led Ms. Lewis to believe that Petitioner’s club meets this requirement. The Petitioner is merely a social club. *Lewis testimony; Resp't. Ex.*

33. “In many ways, the definition of “fraternal beneficiary association” set forth in Indiana Statutes Annotated § 39-4401(b) mirrors the language currently found in its successor statute, Indiana Code § 27-11-1-1, which provides “This article applies to any incorporated society, order, or supreme lodge without capital stock, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not-for-profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and that provides benefits in accordance with this article.” Although Indiana Code § 27-11 now refers to those organizations as “fraternal benefit societies,” the legislative intent behind Indiana Code § 6-1.1-10-23 appears to have been to provide an exemption to fraternal organizations covered by the Indiana insurance laws. That remains true despite the slight difference in terminology between Indiana Code § 27-11 and its predecessor statutes.” *Local Union #414*

International Brotherhood of Teamsters v. Allen County Assessor, Petition Number 02-074-08-2-8-00014 (December 3, 2012). The requirements, therefore, are that the Petitioner must be able to provide proof to demonstrate that it is covered under Indiana insurance laws. The Indiana Department of Insurance would have issued a certificate of authority to the Petitioner so that it could transact business under §27-11 if it was truly a fraternal benefit association. *United Ancient Order of Druids-Grove # 29 v. Wayne County Prop. Tax Assessment Bd. of Appeals*, 867 N.E.2d 296 (Ind. Tax Ct. 2007). There is no such certificate of authority from the Indiana Department of Insurance in the evidence. *Lewis testimony; Resp't. Ex. 7.*

34. All property is subject to taxation in the state of Indiana. When a group is found to be exempt, the burden of the tax shifts to other groups. The legislature has authority under the Indiana Constitution to allow for some exemptions. There are specific requirements that must be met. One must file for the specific and correct exemption in a timely manner. The fraternal benefit association has specific requirements that Petitioner has not met.

ANALYSIS

35. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (citing Ind. Code §6-1.1-2-1). A taxpayer bears the burden of proving that its property qualifies for exemption. *Id.*
36. On its Form 132 Petition, Petitioner claimed that the subject parcel was exempt pursuant to Ind. Code §6-1.1-10-23 because the property was exclusively used by a fraternal benefit association. During the hearing Petitioner also argued that the property was exempt pursuant to Ind. Code §6-1.1-10-16 because the property was predominantly used for charitable purposes. The Petitioner failed to claim a charitable purpose prior to the hearing. The Respondent had no prior notice of the charitable purpose claim. Petitioner could have requested to amend the Petition, but failed to do so. The Board will not permit this kind of last minute change on the basic exemption claim.

37. Even if the Board did consider evidence of charitable use, it still would not grant the exemption.
38. Exemptions are allowed for property that “is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.” Ind. Code §6-1.1-10-16(a). An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. *Knox County PTABOA v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005). Once these three elements are met, the property can be exempt from taxation. *Id.*
39. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 36,38 (Ind. Tax Ct. 2000). The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *Id.* 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*, 826 N.E.2d at 182 (citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 251 N.E.2d 673, 682 (1969)). 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 that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006) and *Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1014.
40. The test to determine whether all or a portion of a property qualifies for an exemption is the “predominant use” test. *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Indiana Code §6-1.1-10-36.3(a) states, “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.” Indiana Code §6-1.1-10-36.3(c) further provides, “[p]roperty that 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.”

41. The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose is a fact sensitive inquiry. There are no bright-line tests. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts. See *Indianapolis Osteopathic Hospital, Inc.*, 818 N.E.2d at 1018 and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).
42. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E. 2d 218, 220 (Ind. Tax Ct. 1996) (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)). Petitioner’s club primarily conducts social activities for the purpose of associating its members together in an organized body for the purpose of social intercourse, interchange of thought, intellectual improvement, and to promote social relations among its members and to provide means of amusement, recreation and entertainment. The benefit Petitioner provides is supplying a place to play card games such as bridge, euchre, and pinochle. This benefit does not serve a charitable purpose sufficient to justify an exemption. Indiana courts have held that the use of facilities for social and recreational activities does not qualify as a charitable use for purposes of entitlement to tax exemption. *Indianapolis Elks Building Corp. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 251 N.E.2d 673, 681 (1969) and *Sahara Grotto and Styx, Inc. v. State Board of Tax Commissioners*, 147 Ind. App. 471, 261 N.E.2d 873, 877 (1970).
43. The Petitioner argued for an exemption based on Ind. Code §6-1.1-10-23(a). That statute provides that “tangible property is exempt from property taxation if it is owned by a fraternal

beneficiary association which is incorporated, organized, or licensed under the laws of this state.” Ind. Code §6-1.1-10-23(a). As Ms. Lewis correctly pointed out, the fraternal benefit association exemption “does not apply to real property unless it is actually occupied and *exclusively* used by the association in carrying out the purpose for which it was incorporated, organized, or licensed.” Ind. Code §6-1.1-10-23(b).

44. While Ind. Code §6-1.1-10-23 does not define the term “fraternal beneficiary association,” at least one case has defined the term in interpreting the predecessor statute to Ind. Code §6-1.1-10-23. *See State Bd. of Tax Comm’rs v. Fort Wayne Sports Club, Inc.*, 258 N.E.2d 874, 880 (Ind. Ct. App. 1970). In *Fort Wayne Sports Club*, the court explained that the term “fraternal beneficiary association” has a “very limited and definitive meaning.” *Id.* The court applied the meaning set forth in Ind. Statutes Annotated §39-4401(b), which was part of a larger statute governing the regulation of fraternal beneficiary associations under Indiana’s insurance laws. *Id.* Ind. Statutes Annotated §39-4401(b) provided, in relevant part:

The term ‘fraternal benefit society’ or ‘fraternal beneficiary association’ shall mean any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit and having a lodge system and representative form of government, and which shall make provision for the payment of [death] benefits in accordance with this act.

Fort Wayne Sports Club, 258 N.E.2d at 880 (quoting Ind. Stat. Anno. §39-4401(b)).

45. In many ways, the definition of “fraternal beneficiary association” set forth in Ind. Statutes Annotated §39-4401(b) mirrors the language currently found in its successor statute, Ind. Code §27-11-1-1, which provides “This article applies to any incorporated society, order, or supreme lodge without capital stock, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not-for-profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and that provides benefits in accordance with this article.” Although Ind. Code §27-11 now refers to those organizations as “fraternal benefit societies,” the legislative intent behind Ind. Code §6-1.1-10-23 appears to have been to provide an exemption to fraternal organizations covered by the Indiana insurance laws. That remains true despite the slight difference in terminology between Ind. Code §27-11 and its predecessor statutes.

46. Thus, in order to demonstrate it is entitled to an exemption under Ind. Code §6-1.1-10-23, a taxpayer must prove (1) that it is an organization described in Ind. Code §27-11-1-1, and (2) that it occupies and uses the property sought to be exempted *exclusively* for the purposes for which the taxpayer was organized or incorporated. The requirements for a “fraternal benefit association” are specific. A society has a “representative form of government,” if it meets all of the following conditions:

(1) It has a supreme governing body constituted in one (1) of the following ways:

(A) The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates shall constitute a majority in number and shall not have less than a majority of the votes and not less than the number of votes required to amend the society's laws. The assembly shall meet at least once every four (4) years and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws.

(B) The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member may not exceed four (4) years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. Those persons elected to the board constitute a majority in number and not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member is considered to be an elected member. The board shall meet at least quarterly to conduct the business of the society.

(2) The officers of the society are elected either by the supreme governing body or by the board of directors.

(3) Only benefit members are eligible for election to the supreme governing body, the board of directors, or any intermediate assembly.

(4) Each voting member shall have one (1) vote and no vote may be cast by proxy.

Ind. Code §27-11-2-2.

47. Here, Petitioner’s witness, Mr. Borden, merely testified that the Articles of Incorporation, the club’s constitution and its bylaws exist, but he failed to mention anything related to a supreme governing body. Under Ind. Code §27-11-2-2(2) either the supreme governing body or the board of directors must elect its officers. Petitioner provided no evidence as to how its officers were elected. Moreover, the Petitioner provided no evidence that it was “operated on a lodge system with ritualistic form of work.” Ind. Code §27-11-1-1.
48. More importantly, Petitioner bears the burden of showing that it pays benefits in accordance with Ind. Code §27-11. Thus, Petitioner was required to demonstrate that it acted as an insurer regulated by the Indiana Department of Insurance. If this were true, Petitioner easily could have done so by presenting a copy of a certificate of authority authorizing it to transact business under Ind. Code §27-11. Such a certificate would have constituted prima facie evidence of the existence of Petitioner as a fraternal beneficiary association as of the date of that certificate. *See* Ind. Code §27-11-4-6 (“Upon presentation of satisfactory evidence that the society has complied with all the provisions of the law, the commissioner shall issue to the society a certificate of authority authorizing the society to transact business under this article. The certificate of authority is prima facie evidence of the existence of the society at the date of the certificate.”). But Petitioner failed to do so. Mr. Borden merely testified that Petitioner provides a benefit for its members by giving them a place to gather in order to play cards and socialize. Petitioner failed to meet its burden of proving that it is a fraternal benefit association within the meaning of Ind. Code §6-1.1-10-23 or Ind. Code §27-11-7-4.
49. The property has been exempt for several years. In original tax appeals, however, each assessment and each tax year stand alone. *Thousand Trails Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001). Thus, evidence that Petitioner’s property was exempt in the past does not raise a prima facie case that the property is exempt in a different tax year. *Id.*
50. The Petitioner failed to show that its property was entitled to an exemption under Ind. Code §6-1.1-10-16 or under Ind. Code §6-1.1-10-23. Where the Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with

substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

51. The Board finds in favor of the Respondent and holds that the Petitioner's real and personal property is 100% taxable for the 2010 assessment year.

This Final Determination of the above captioned matter is issued on the date first written above.

Commissioner, 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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>