

REPRESENTATIVE FOR PETITIONER:

Timothy Kuiper, Attorney, Austgen & Decker , PC  
David M. Austgen, Attorney, Austgen & Decker, PC

REPRESENTATIVE FOR RESPONDENT:

Mark Thiros, Attorney, Cohen & Thiros

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

St. George Serbian	)	Petition Nos.: 45-036-01-2-8-00001
Orthodox Church,	)	45-036-02-2-8-00001
	)	45-036-03-2-8-00001
Petitioner,	)	
	)	
v.	)	
	)	
Lake County Property	)	Parcel No: 20-13-544-0001
Tax Assessment Board of	)	
Appeals,	)	County: Lake
	)	Township: St. John
Respondent.	)	
	)	
	)	Assessment Years: 2001, 2002, and 2003

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

**October 22, 2007**

**FINAL DETERMINATION**

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

1. The issue presented for consideration by the Board is whether the subject property

should be granted a 100% religious exemption under Ind. Code § 6-1.1-10-16.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **PROCEDURAL HISTORY**

2. On February 5, 2003, Ray Vukas, the President of St. George Serbian Orthodox Church (St. George) signed three Applications for Property Tax Exemption (Form 136) for the Petitioner's real and personal property for the 2001, 2002, and 2003 assessment years. The Petitioner filed its Form 136 applications on March 3, 2003. The PTABOA accepted the Petitioner's 2003 filing, but refused to accept the Petitioner's Form 136 applications for 2001 and 2002 until July 31, 2003.<sup>1</sup>
  
3. On October 3, 2003, the Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its determination, denying the Petitioner's request for 100% exemption for 2001. On October 23, 2003, pursuant to Ind. Code § 6-1.1-11-7, St. George filed a Petition to the Indiana Board of Tax Review for Review of Exemption (Form 132) requesting that the Board conduct an administrative review of the property's 2001 assessment. On February 19, 2004, the PTABOA issued its determination for 2002 again denying the Petitioner's request for 100% exemption. On March 4, 2004, St. George filed a Form 132 requesting that the Board conduct a review of its property's 2002 assessment. On August 15, 2006, the PTABOA issued its determination denying the Petitioner's request for exemption for 2003. On September 12, 2006, St. George filed a Form 132 requesting that the Board conduct an administrative review of the property's 2003 assessment.

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<sup>1</sup> We encourage the PTABOA, in future matters, to accept and file stamp all applications for exemption. If the PTABOA believes that the application is untimely or flawed in some way, it should simply deny the application for exemption so that the taxpayer may appeal such denial to the Board.

## 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 July 25, 2007, in Crown Point, Indiana.

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

For the Petitioner:

Mike Muskin, President of St. George Serbian Orthodox Church Board.<sup>2</sup>

For the Respondent:

Sharon Fleming, Director Non-Profit Department, Lake County Assessor's Office,

Hank Adams, St. John Township Assessor,

Betty Wilusz, Deputy Assessor, St. John Township.<sup>3</sup>

5. The Petitioner submitted the following exhibits:

Petitioner Exhibit 1 with the following attachments:

Tab 1 – Appearance of the law firm of Austgen, Kuiper & Associates, P.C.

Tab 2 – Limited Power of Attorney,

Tab 3 – Application for Property Tax Exemption for tax year 2001,

Tab 4 – Application for Property Tax Exemption for tax year 2002,

Tab 5 – Application for Property Tax Exemption for tax year 2003,

Tab 6 – St. George Serbian Orthodox Church, Internal Revenue Service exempt organization search results, Church Entity Affidavit, and By-laws,

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<sup>2</sup> Renee Uzelac, Secretary for St. George's, Father Popovich, Priest at St. George's, and Mirko Blesich, a member of St. George's, were also sworn as witnesses, but did not present testimony.

<sup>3</sup> Carol Ann Seaton and Vernon W. Vierk, members of the PTABOA, were also present.

- Tab 7 – Church Affiliated Organizations Affidavit and attached list of St. George Serbian Orthodox Church affiliated organizations,
- Tab 8 – St. George Serbian Orthodox Athletic, Inc., Articles of Incorporation, Certificate of Incorporation, Certificate of Existence, Alcohol and Tobacco Commission Permit,
- Tab 9 – Copy of floor layout for the Halls of St. George
- Tab 10 – Internal and external photographs of the Halls of St. George,
- Tab 11 – Affidavit of Facility Use, Supplemental Affidavit of Facility Use with attached calendar of events for 2000, 2001, and 2002,
- Tab 12 – Financial Affidavit with attached Profit and Loss Statements for 2000, 2001, and 2002,
- Tab 13 – Tax Record Affidavit with attached Return of Organization Exempt from Income for 1999, 2000, and 2002,
- Tab 14 – Affidavit Regarding Non-Notice with attached Property Maintenance Report for 2000 pay 2001, Property Maintenance Report for 2001 pay 2002, property record cards for 2000 and 2001, Assessor Form 113/PP Notice of Assessment/Change dated August 20, 2002, Deeds,
- Tab 15 – Memorandum of Law in Support of Applications for Property Tax Exemption,
- Tab 16 – May 12, 2006, letter transmitting supplemental information for tax year 2003,
- Tab 17 – 2001 Petition to the Indiana Board of Tax Review for Review of Exemption,
- Tab 18 – 2002 Petition to the Indiana Board of Tax Review for Review of Exemption,
- Tab 19 – 2003 Petition to the Indiana Board of Tax Review for Review of Exemption,
- Tab 20 – Notice of Assessment/Change dated July 19, 2002,
- Tab 21 – PTABOA meeting minutes for February 6, 2003,
- Tab 22 – PTABOA meeting minutes for July 26, 2003,
- Petitioner Exhibit 23 – Meeting minutes from PTABOA meeting February 6, 2003, meeting minutes from July 31, 2003, meeting minutes from March 29, 2006, meeting minutes from May 31, 2006, with a July 26, 2006, cover page and meeting minutes from July 26, 2006, with an August 30, 2006, cover.<sup>4</sup>

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<sup>4</sup> Petitioner Exhibit 23 was not included in the binder, but was submitted without objection.

6. The Respondent submitted the following exhibits:<sup>5</sup>

Respondent Exhibit A – Photograph of a banner outside the Halls of St. George,

Respondent Exhibit B – Print out from the Halls of St. George website and the Real Property Maintenance Report for 2001 pay 2002,

Respondent Exhibit C – Various advertisements for the Halls of St. George,

Respondent Exhibit D – Betty Wilusz note regarding meeting with a St. George member.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The 132 Petitions,

Board Exhibit B – Notices of Hearing dated June 19, 2007,

Board Exhibit C – Order Regarding Conduct of Exemption Hearing,

Board Exhibit D – Hearing sign in sheet.

8. The subject property is a church complex consisting of a church, a residential dwelling, a garage, a 9,000 square foot hall and a 39,000 square foot cultural center, located at 905 E. Joliet Street, Schererville, St. John Township, Lake County.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2001, the Lake County PTABOA determined the Petitioner's land and improvements to be 80% taxable.<sup>6</sup> For 2001, the St. John Township Assessor assessed the exempt land at \$283,700 and the taxable land at \$590,300 and the exempt improvements at \$701,800 and the taxable improvements at \$3,288,400.

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<sup>5</sup> Mt. Kuiper objected to Respondent Exhibits A, B, and C as being irrelevant because the Petitioner admits to having a website and advertising. The Board, however, admits the exhibits over objection and will determine the weight to be assigned to the exhibits. 52 IAC 2-7-2(b).

<sup>6</sup> The cultural center and the land under the building comprise the 80% of the property that the PTABOA determined to be taxable.

For 2002 and 2003, the Lake County PTABOA determined the land and improvements to be 80% taxable and the personal property 100% taxable. For 2002, the St. John Township Assessor assessed the exempt land at \$436,400 and the taxable land at \$1,054,800 and the exempt improvements at \$1,077,200 and the taxable improvements at \$5,064,700. The assessor valued the taxable personal property at \$193,050 for 2002. For 2003, the assessor valued the exempt land at \$185,540 and the taxable land at \$742,160 and the exempt improvements at \$904,260 and the taxable improvements at \$3,617,040. The assessor valued the taxable personal property at \$272,164 for 2003.

11. The Petitioner contends the property is entitled to a 100% exemption.

#### **JURISDICTIONAL FRAMEWORK**

12. 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). All such 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**

13. 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).

14. 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”).
15. 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**

16. 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.
17. 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).
19. 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)).

20. 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 708, 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**

21. The Petitioner contends its property should be 100% exempt under Ind. Code § 6-1.1-10-16 as a religious organization. Further, the Petitioner contends that it had no obligation to file an application for exemption because it filed an exemption application for its property in 2000. Finally, the Petitioner contends that, even if it were required to file an application for exemption, it did not receive notice of the increase in assessment required by statute.
22. The Petitioner presented the following evidence in regard to this issue:
  - A. The Petitioner contends that St. George is an exempt organization under the Internal Revenue Service rules. *Kuiper argument; Petitioner Exhibit 1, Tab 6.* According to the Petitioner, St. George is a church with over a thousand members. *Kuiper argument.* Its property contains multiple buildings. *Id.* The Petitioner argues that the only building at issue in this appeal is the cultural center, known as the Halls of St. George. *Id.*



- B. The Petitioner argues that the PTABOA improperly denied it a full exemption for 2001, 2002 and 2003. *Kuiper argument*. According to the Petitioner, its property received 100% exemption in 2000. *Id.*; *Petitioner Exhibit 1, Tab 15*. Because its property received an exemption in 2000, the Petitioner contends, it was not required to file an exemption application until 2002 under Ind. Code § 6-1.1-11-3.5(a). *Kuiper argument; Petitioner Exhibit 1, Tab 14 and Tab 15*.
- C. Additionally, the Petitioner argues, St. George did not receive notice that its assessment would increase. *Kuiper argument*. According to the Petitioner, St. George did not file Applications for Property Tax Exemption in the years 2001 and 2002 before the May 15 deadline because it had no notice of the increased assessment. *Id.* Thus, the Petitioner contends, the assessor violated its due process rights. *Id.*
- D. The Petitioner argues that the Indiana Legislature has made clear that real and personal property are 100% exempt from property taxation if the property is predominately used for religious purposes. *Kuiper argument; Petitioner Exhibit 1, Tab 15*. In support of this contention, the Petitioner cites various statutes including Ind. Code § 6-1.1-10-16, Ind. Code § 6-1.1-10-21, and Ind. Code § 6-1.1-10-36.3. *Id.* The Petitioner also cites several Indiana court cases that it contends support the public policy of exempting tangible property predominately used for religious purposes. *Kuiper argument; Petitioner Exhibit 1, Tab 15*. According to the Petitioner, *Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm'rs*, 251 N.E.2d 673 (Ind. App. 1969), *Trinity Episcopal Church v. State Bd. of Tax Comm'rs*, 694 N. E. 2d 816 (Ind. Tax 1998) and *Alte Salems Kriche, Inc. v. State Bd. of Tax Comm'rs*, 733 N.E.2d 40 (Ind. Tax 2000), hold that the focus of the Board's inquiry should be whether the use of the property furthers the exempt purpose. *Id.*
- E. The Petitioner contends that the Halls of St. George is predominately used for church related activities. *Kuiper argument*. The Petitioner's witness testified

that the hall includes the administrative offices for the church, which are occupied and used at least five days a week by secretaries, the parish priest and the officers of St. George. *Muskin testimony*. The hall is also a cultural center. *Id.* The Petitioner calculated that 87% of the activities in the hall in 2000 were church-related. *Kuiper argument; Petitioner Exhibit 1, Tabs 11 and 16.* In addition, the Petitioner determined that 65% of the activities in 2001, 72% of the activities in the hall in 2002, and 63% of the activities in the hall in 2003 were church-related activities. *Id.* In support of this contention, the Petitioner presented a list of organizations that are part of St. George and summaries of the calendars of events for 2000, 2001, 2002, and 2003. *Petitioner Exhibit 1, Tabs 7, 9, 11, and 16.*

- F. The Petitioner admits that the hall is rented for weddings, banquets, and special events. *Kuiper argument*. The Petitioner argues, however, that this helps defray part of the expenses of the cultural center. *Id.* According to the Petitioner, the hall has operated at a loss since opening. *Muskin testimony; Petitioner Exhibit 1, Tab 12.* The net operating loss and obligations are paid through church donations, membership dues, fundraisers, bingo, and a stewardship program. *Muskin testimony.*

### **Respondent's Contentions**

23. The Respondent contends that the Petitioner is not entitled to an exemption for the cultural center.
24. The Respondent presented the following in support of its contention:
- A. The Respondent contends that, under Ind. Code § 6-1.1-11-1, an exemption is a privilege which may be waived by a person who owns property that would qualify for an exemption. *Thiros argument*. According to the Respondent, if a property owner does not comply with the statutory procedures for obtaining

an exemption, he waives the exemption. *Thiros argument*. The Respondent further contends that the Petitioner, by its own admission, failed to seek an exemption for the hall for 2001 and 2002. *Id.*

- B. The Respondent contends that, whether the Petitioner received notice that its assessment would increase or that the cultural center was being assessed, is unrelated to its obligation to file an application for exemption. *Thiros argument*. The Respondent, however, argues that the Petitioner did, in fact, receive notice of its assessment. *Id.* In support of this contention, the Respondent's witness, Mr. Adams, testified that his office mailed the notice of assessment for 2001 to the address provided by the auditor's office and that the notice was not returned by the postal service. *Adams testimony*. Similarly, Ms. Fleming, testified that the Petitioner represented to the Board at the PTABOA meeting in February of 2003, that they had not timely filed for 2001 and 2002 but that they wanted the Board to accept and deny the appeals so they could go forward with the appeal process. *Fleming testimony*. Accordingly, the PTABOA accepted and denied the Petitioner's 2001 and 2002 applications at its July 31, 2003, meeting. *Id.*; *Petitioner Exhibit 23*.
- C. The Respondent further contends that the Petitioner failed to provide adequate evidence of the facility's use to grant an exemption for 2003. *Thiros argument*. According to the Respondent, the Petitioner failed to provide a break down of the square footage of the facility. *Id.* In addition, the Petitioner did not provide its actual rental contracts or the original calendar of events. *Id.*
- D. The Respondent also argues that many of the events that the Petitioner claims are "exempt," such as basketball tournaments, are not exempt uses of the facility. *Thiros argument*. According to Mr. Adams, the list of tax-exempt events that the Petitioner submitted includes events that are not religious in nature. *Adams testimony*. Mr. Adams admitted, however, that he has not

personally witnessed all the operations of St. George. *Id.* Similarly, the Respondent's witness, Ms. Fleming, testified that she recommended denial of the 2003 application because, based on the Petitioner's summaries of events, the Halls of St. George did not qualify as predominantly used for religious purposes. *Fleming testimony.* Ms. Fleming testified that she believed that many of the events the Petitioner considers to be exempt are not and, therefore, the percentages she calculated are different from the Petitioner's. *Id.* On cross-examination, however, Ms. Fleming testified that she did not have anything that showed her calculations or percentages. *Id.*

- E. Finally, the Respondent argues, the facility is a commercial banquet hall rather than a religious institution. *Thiros argument.* The Respondent's witness, Mr. Adams testified that, on various occasions, he drove by the Halls of St. George and took photographs of the facility's events. *Adams testimony; Respondent Exhibit A.* Mr. Adams further testified that the Petitioner's website and various advertisements show the hall's commercial use. *Adams testimony; Respondent Exhibits 2 and 3.*

### **Analysis of the Issue**

#### *The Petitioner's 2001 and 2002 Applications were not Timely Filed*

25. The Petitioner argues that, because the church had filed for exemption in 2000, it was not required to file an application until 2002. The Respondent contends that the Petitioner failed to file an application for exemption for the cultural center after the hall was constructed.
26. Ind. Code § 6-1.1-11-3(b) states that an "owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the auditor of the county in which the property that is the subject of the exemption is located. The application must be filed annually on or before

May 15 on forms described by the department of local government finance.” An application for exemption, however, is not required if the property is used for religious purposes where an application for exemption “was filed properly at least once after the property was designated for a religious use as described in IC 6.-1.1-10-16.” Ind. Code § 6-1.1-11-4.

27. The question then is whether the church’s application for exemption on its existing property was sufficient to exempt its later constructed cultural center. We hold it was not. The code sections at issue refer to buildings and structures rather than parcels of property. Ind. Code § 6-1.1-10-16 exempts “all or part of a building.” Similarly, Ind. Code § 6-1.1-10-21 exempts “(1) A building that is used for religious worship; (2) The pews and furniture contained within a building that is used for religious worship; [and] (3) The tract of land upon which a building that is used for religious worship is situated if it is owned by a church or religious society.” In addition, a building used as a parsonage and the tract of land on which it sits is exempt if owned by a church or religious society. Ind. Code § 6-1.1-10-21(b). It is clear from the language of the exemption statutes that the legislature did not intend to exempt property by parcel, but by building or structure or by identifiable personal property.<sup>7</sup> Thus, the Petitioner’s exemption on its existing property did not serve to exempt its later-built cultural center.
28. To hold otherwise would improperly shift the taxpayer’s burden to show that the building is used for an exempt purpose, to the assessor to show that the property is not used for an exempt purpose. In addition, it would treat those entities that

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<sup>7</sup> Likewise, the application for exemption, “Required Information for Property Tax Exemption,” requires an applicant to describe all structures and state specifically the normal use of each room or area in each structure. This makes sense. An assessor must know what property is claimed to be exempt and how that property is used in order to evaluate an application for exemption. Here, in its applications for exemption for 2001, 2002, and 2003, the Petitioner identified the church used for religious services, a house used for residence, and the cultural center used for “church events including choir practice, folklore practice, church meetings.” *Petitioner’s Exhibits 3, 4 and 5*. The Petitioner implies through its argument that its prior application for exemption should also include the cultural center. That application, however, is not in evidence. Further, it is unlikely that the application included the cultural center because it was not built at the time of the application. Thus, the assessor would have no knowledge that the Petitioner was claiming an exemption for the building and would have no information as to how the structure was being used.

construct additional buildings on an existing parcel more favorably than an entity that constructs the same building on a similar piece of land that is a contiguous parcel rather than part of a single lot. Finally, such an interpretation would circumvent the requirement that the property first have an exemption application filed “at least once after the property was designated for a religious use.” Ind. Code § 6-1.1-11-4. Therefore, we hold that the Petitioner was required to file an exemption application for the cultural center.

29. Ind. Code § 6-1.1-11-1 states that an exemption “is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption.” If a property owner fails to comply with the statutory procedures for obtaining an exemption, “the exemption is waived [and] the property is subject to taxation.” *Id.* Here, the Petitioner’s failure to file an application for exemption for the cultural center on or before May 15, 2001, waived the Petitioner’s right to an exemption on that property for the 2001 tax year. Similarly, the Petitioner’s failure to file an application for exemption on or before May 15, 2002, waived the Petitioner’s right to an exemption on the cultural center for the 2002 tax year.

#### *Notice of Assessment*

30. The Petitioner also argues that it did not receive notice of the assessment and, therefore, the assessor denied its due process rights. The Respondent contends that the notice was mailed to the address of record.
31. Under Ind. Code § 6-1.1-9-1, “If a township assessor, county assessor, or county property tax assessment board of appeals believes that any taxable tangible property has been omitted from or undervalued on the assessment rolls or the tax duplicate for any year or years, the official or board shall give written notice under IC 6-1.1-3-20 or IC 6-1.1-4-22 of the assessment or increase in

assessment.”<sup>8</sup> Ind. Code § 6-1.1-15-13, however, allows that, “if notice of the action of a board or official is not otherwise given in accordance with the general assessment provisions of this article, the receipt by the taxpayer of the tax bill resulting from that action is the taxpayer's notice for the purpose of determining the taxpayer's right to obtain a review or initiate an appeal under this chapter.” Thus, the Petitioner’s tax bill was sufficient notice of its assessment under Indiana Code and its right to appeal that assessment ensured the Petitioner’s due process rights were protected.

32. The Petitioner was required to timely file an application in order to obtain an exemption for its cultural center. Ind. Code § 6-1.1-11-3. That statutory obligation exists whether the property has been assessed previously or is a new facility that has yet to be assessed. Therefore, the Petitioner’s due process rights were not violated by receiving notice of its assessment after the deadline for filing its application for exemption passed. Thus, the Petitioner failed to raise a prima facie case that it was entitled to an exemption for tax years 2001 and 2002.

*The Petitioner Raised a Prima Facie Case that its Cultural Center  
Was “Predominantly Used” for Religious Purposes in 2003*

33. The parties agree that the Petitioner timely filed an application for exemption for the cultural hall for the 2003 assessment year. The Petitioner contends that the predominant use of the cultural center in 2003 was for religious or church-related activities and, therefore, the property is entitled to a 100% exemption. The

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<sup>8</sup> Ind. Code § 6-1.1-3-20 addresses personal property and states “If an assessing official or board changes a valuation made by a person on his personal property return or adds personal property and its value to a return, the assessing official or board shall, by mail, immediately give the person notice of the action taken. However, if a taxpayer lists property on his return but does not place a value on the property, a notice of the action of an assessing official or board in placing a value on the property is not required.” Ind. Code § 6-1.1-4-22 states that “(a) If any assessing official or any county property tax assessment board of appeals assesses or reassesses any real property under the provisions of this article, the official or county property tax assessment board of appeals shall give notice to the taxpayer and the county assessor, by mail, of the amount of the assessment or reassessment.”

Respondent argues that the property is a banquet hall that was predominantly used for non-exempt purposes.

34. Ind. Code §6-1.1-10-16(a) states that “All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.” Further, “a tract of land, ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; (2) a parking lot or structure that serves a building referred in subdivision (1) is situated on it.” Ind. Code §6-1.1-10-16(c). Finally, “[p]ersonal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.” Ind. Code §6-1.1-10-16(d).
  
35. The test used to determine whether all or a portion of a subject property qualifies for an exemption 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 that is predominantly used or occupied for one (1) or more of the stated purposes by a church, religious society, or not-for-profit school is totally exempt under that section.” Ind. Code § 6-1.1-10-36.3(c)(2).
  
36. Here, the Petitioner presented a list of the organizations that are part of St. George and summaries of the calendars of events for 2000, 2001, 2002, and 2003. *Petitioner Exhibit 1, Tabs 7, 9, 11, and 16*. From the events listed on the summaries, the Petitioner calculated the percentage of scheduled church related activities that took place in the hall to be 87% in 2000, 65% in 2001, 72% in 2002 and 63% in 2003. *Id.* Further, the Petitioner argues, there are also church related



activities that do not appear on the schedule, such as impromptu organizational meetings. *Muskin testimony*. Finally, the Petitioner's witness testified that the building contains the administrative offices for the church secretaries, the parish priest and the officers of the church and that they are used 100% of the time for an exempt purpose. *Id.* Thus, the Petitioner raised a prima facie case that the predominant use of the cultural center is for religious or church-related activities.

37. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *American United Life*, 803 N.E.2d 276. Here, the Respondent contends the Petitioner's calendars of events include activities that are not religious in nature, such as fish-frys and basketball tournaments. The Respondent further contends that the building is used primarily as a banquet hall and presented a photograph, newspaper advertisements and website information in support of this contention. *Respondent Exhibits A-C*. According to the Respondent, the Petitioner has not submitted sufficient evidence to warrant exemption for its banquet hall. *Thiros argument*. The Respondent argues that the Petitioner failed to supply a break down of the facility as to the square footage or the actual hours for the events. *Id.* Further, the Petitioner failed to provide the contracts for such events.<sup>9</sup>
38. The fact that St. George holds non-exempt events and advertises such events to the public is not in dispute. The only issue is whether the cultural center is used more than 50% of the time for religious purposes. The Petitioner raised a prima facie case that the property was used 63% of the time for an exempt purpose. The Respondent submitted no evidence to rebut or impeach the Petitioner's evidence that the hall is predominantly used for exempt purposes. While there may come a

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<sup>9</sup> Much of the Respondent's arguments centered around documents that the Petitioner "failed to provide" as if such documents would somehow contradict the Petitioner's evidence that the cultural center was used 63% of the time for religious purposes. While the documents may, in fact, have conflicted with the Petitioner's witnesses' testimony, the Respondent did not present such rebuttal evidence. A mere allegation that the documents could have shown a different use, unsupported by probative evidence of such use, is conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). The Respondent is reminded that the Board's rules allow liberal use of discovery to develop its case. *See 52 IAC 2-8-3*.

time that the cultural center is such a successful banquet hall that it is no longer used more than 51% of the time for church purposes, that did not happen in 2003. “Property that is predominantly used or occupied for one (1) or more of the stated purposes by a church, religious society, or not-for-profit school is totally exempt under that section.” Ind. Code § 6-1.1-10-36.3(c)(2). The Board, therefore, determines that the cultural center is 100% exempt for 2003.

### **Summary of Final Determination**

39. The Petitioner failed to timely file an application for exemption for 2001 and 2002. The Board, therefore, finds in favor of the Respondent in the Petitioner’s 2001 and 2002 appeals.
  
40. For 2003, the Petitioner raised a prima facie case that the cultural center is entitled to 100% exemption. The Respondent failed to rebut this evidence. The Board finds in favor of the Petitioner and holds that the property is 100% exempt for 2003.

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

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Commissioner, Indiana Board of Tax Review

## **IMPORTANT NOTICE**

- 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>>