

REPRESENTATIVE FOR PETITIONER: Brent Claymon, Boone County Tennis Center
Board President

REPRESENTATIVE FOR RESPONDENT: Lisa Garoffolo, Boone County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Boone County Tennis Center, Inc.,)	Petition No.	06-005-18-2-8-01065-18
)		
Petitioner,)	Parcel Nos.:	103-90454-00
)		003-08460-00
)		
v.)	County:	Boone
)		
Boone County Assessor,)	Assessment Year:	2018
)		
Respondent.)		

April 15, 2020

FINAL DETERMINATION

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

INTRODUCTION

1. The Boone County Tennis Center (“Tennis Center”) seeks an educational exemption from personal and real property tax for 2018. While some of the use of the property appears to be for educational purposes, there is also non-exempt use such as renting out tennis courts for recreation. Because the property was used for both exempt and non-exempt purposes, the Tennis Center was required to provide evidence comparing the relative uses of the property in the year preceding the assessment date. The Tennis Center failed to provide this evidence. Thus, we find the subject property to be 100% taxable for the 2018 assessment year.

PROCEDURAL HISTORY

2. The Tennis Center applied for a property tax exemption for educational purposes. The Boone County Property Tax Board of Appeals (“PTABOA”) denied the request and found the property to be 100% taxable for 2018. The Tennis Center appealed to the Board.
3. The Board’s designated Administrative Law Judge, Jennifer Thuma, held a hearing on February 6, 2020 in Boone County. Lisa Garoffolo, Boone County Assessor, and Peggy Lewis, Deputy Assessor, testified for the Assessor’s Office. President Brent Claymon testified for the Boone County Tennis Center. All were sworn under oath as witnesses.
4. The following exhibits were submitted¹:

Petitioner’s Exhibit A:	Youth Tennis Pathway Course Descriptions
Petitioner’s Exhibit B:	Boone County Tennis Center, Inc. Articles of Incorporation,
Petitioner’s Exhibit C:	Clinic Descriptions and Schedules,
Petitioner’s Exhibit D:	Court Schedule for March 10-16, 2018,
Petitioner’s Exhibit E:	Instructor Biographies,
Petitioner’s Exhibit F:	Architectural drawings,
Petitioner’s Exhibit G:	Income statement,
Petitioner’s Exhibit H:	Financial Reports.
5. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) a digital recording of the hearing.

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official’s decision has the burden of proof. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d

¹ Exhibits B-H were submitted to the Board prior to the hearing. At the hearing, the Tennis Center’s representative indicated that he wished them to be made a part of the record. The Assessor did not object. Accordingly, we admit them into evidence and assign them exhibit numbers. The Assessor also mailed documents to the Board prior to the hearing but did not ask for them to be admitted. Thus, those exhibits are not in evidence.

654, 657 (Ind. 2010). A taxpayer bears the burden of proving it is entitled to an exemption. *Oaken Bucket*, 938 N.E.2d at 657. Exemption statutes are strictly construed against the taxpayer. Every exemption case “stand[s] on its own facts,” and it is the Petitioner’s duty to walk the Board through the analysis. *Id.*

FINDINGS OF FACT

7. The Tennis Center is an Indiana nonprofit organization. Its facility is located at 4560 South 875 East in Zionsville. It includes eight indoor tennis courts, locker rooms, and spectator areas. The Internal Revenue Service designated the organization as a 501(c)(7) organization exempt from federal income tax. *Pet’r Ex. B, F; Claymon testimony.*
8. A board of directors serves on a volunteer basis to oversee the Tennis Center. All revenue generated through tennis fees and memberships are used for the Tennis Center. It also provides scholarships and reduced fees for those of less means. *Claymon testimony.*
9. The Tennis Center provides education for youth as young as four years of age through high school. It offers numerous programs, group lessons for all levels, competitions, and drill practices. The classes are taught by high school tennis coaches and other teachers certified by the United States Tennis Association. Leadership, teamwork, and other skills are taught along with tennis. Based on the schedule for March 10-16, Claymon testified that about 2/3-3/4 of the Tennis Center’s time was used for education. *Pet’r Ex. D; Claymon testimony.*
10. In addition, the Tennis Center also regularly allows schools to use tennis courts for practice throughout the year without requiring membership, particularly during inclement weather. *Claymon testimony.*
11. Youth make up 70% of the Tennis Center’s participants. The Tennis Center actively advances the goals of the USTA Presidential Taskforce to help youth attend college who otherwise would not seek a college education. *Claymon testimony.*

CONCLUSIONS OF LAW

12. While property is generally taxable in Indiana, the legislature exempts certain types of properties from taxation and the taxpayer bears the burden of proving it is entitled to an exemption. *Oaken Bucket at 654, 657*. Property tax exemptions are strictly construed against the taxpayer. *Nat'l Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E. 2d 218, 220, 21 (Ind. Tax Ct. 1996).
13. Indiana Code § 6-1.1-10-16(a) provides an exemption for all or part of a building that is owned and exclusively or predominately used and occupied for educational, literary, scientific, religious, or charitable purposes. *See also* Ind. Code § 6-1.1-10-36.3 (c) and *Sangralea Boys Fund, Inc. v. State Bd. Of Tax Comm'rs*, 686 N.E. 2d 954, 959 (Ind. Tax Ct. 1997). These terms are to be defined and understood in their broad constitutional sense. *State Bd. of Tax Comm'rs v. Methodist Home for Aged*, 241 N.E. 2d 84 (1968). Additionally, personal property is exempt if it is owned and used in such a way that it would be exempt as a building. Ind. Code § 6-1.1-10-16(c). The exemption extends to land on which an exempt building is situated. It also extends to land on which a parking lot or other structure serving an exempt building is located. Ind. Code § 6-1.1-10-16(c)(1)-(2).
14. To receive an exemption from property tax, the property must be owned, occupied, and used for an exempt purpose more than 50% of the time during the year preceding the assessment date. When a property is used for both exempt and non-exempt purposes, a taxpayer claiming an exemption must compare the relative time of exempt and non-exempt use. *See Hamilton Cnty. Ass'r v. Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017).
15. The Assessor argues that because the Tennis Center is a 501(c)(7) organization, rather than a 501(c)(3) organization, it does not qualify for an exemption. This is incorrect. The type of organization is not dispositive. Even a for-profit entity may receive an exemption. *See College Corner v. Dep't of Local Gov't Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).

16. Instead, to receive an educational exemption, a taxpayer must demonstrate an educational purpose that confers “a public benefit justifying the loss in tax revenue.” *Dep’t of Local Gov’t Fin. v. Roller Skating Rink Operators Ass’n*, 853 N.E.2d 1262, 1265 (Ind. 2006). A public benefit is sufficient to justify an educational exemption when the courses at issue correlate to those found in tax supported schools and “to some extent” relieve the State’s burdens. *Trinity Sch. of Natural Health v. Kosciusko County PTABOA*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003). The courses need not be identical to those taught in tax-supported schools. *Id.*, at 1238. A determining factor is whether the educational activities benefit the public, rather than the presenter. *Roller Skating Rink Operators Ass’n*, 853 N.E.2d at 1266. The exemption will be denied when the educational training is merely incidental to recreational and hobby activities. *Nat’l Ass’n of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218, 222 (Ind. Tax Ct. 1996).
17. Sports such as tennis are typically thought of as recreation, rather than education. In *State Board of Tax Com. v. Ft. Wayne Sport Club, Inc.*, 147 Ind. App. 129 (1970) the Court of Appeals held that an athletic club primarily used for social and recreational purposes could not qualify for an educational exemption. But the fact that a property is used for sports does not necessarily preclude an educational exemption, depending on the nature of the activities. In *Richmond Gymnastics Training Ctr. v. Dep’t of Local Gov. Fin.*, (Ind. Tax Ct. 2003), the Indiana Tax Court held that the public and private lessons offered at a gymnastics facility were similar to those offered in physical education classes in schools, and that the predominate use of the property was educational.
18. In this case, it seems clear that at least some of the time the subject property is used for the type of educational activities the Tax Court found exempt in *Richmond Gymnastics*. Tennis is taught in schools, and the Tennis Center offers a wide range of educational tennis programs to youth. In addition, the Tennis Center lets school teams use the facility free of charge. We find these activities to be analogous to those in *Richmond Gymnastics*.

19. But it also seems clear that at least some of the time the property is used for non-exempt activities. Claymon, the Tennis Center's president, admitted that in addition to classes, the facilities are also rented out to members for recreational use. This is not educational. Where a property is used for both exempt and non-exempt purposes, a taxpayer claiming an exemption must compare the time of exempt and non-exempt use. *See Hamilton Cnty. Ass'r v. Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017). (“[F]ailure to provide the Indiana Board with a comparison of the relative amounts of time that a property was used for exempt and non-exempt purposes is fatal to a claim of exemption under Indiana Code § 6-1.1-10-36.3.”).

20. The Tennis Center did provide some of this type of evidence. Claymon estimated that based on a schedule from March 10-16, 2018, the Tennis Center was used for classes approximately 2/3-3/4 of the time. While this does provide some indication of how the Tennis Center is used, it is not sufficient. The predominant use test considers the use of the property in the year preceding the assessment date. *See Ind. Code § 6-1.1-10-36.3(a)*. For the 2018 assessment date of January 1, 2018, that year was January 1-December 31, 2017. There was no reliable evidence about how the property was used in that time, much less a comparison of the relative times the property was used for exempt and non-exempt purposes as required by *Duke*. Without evidence that shows (1) the property was predominantly used for exempt purposes in the year preceding the assessment date and (2) what percentage of the time the property was used for exempt purposes, we are compelled to deny the exemption.

CONCLUSION

21. At least some of the use of the subject property appears to be for educational purposes. But the Tennis center failed to provide reliable evidence comparing amount of time it was used for exempt purposes versus non-exempt purposes in the year preceding the assessment date. Thus, we find the Tennis Center to be 100% taxable for the 2018 assessment year.

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

Chairman, 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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>