

REPRESENTATIVE FOR PETITIONER: Jesse Beasley, Pastor/President

REPRESENTATIVE FOR RESPONDENT: F. John Rogers, Thompson & Rogers

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

LIVING WORD OF GOD)	Petition No.: 02-074-11-2-8-00002
MINISTRIES,)	
)	County: Allen
Petitioner,)	
)	Township: Wayne
v.)	
)	Parcel No.: 02-12-24-227-003.000-074
ALLEN COUNTY ASSESSOR,)	
)	Assessment Year: 2011
Respondent.)	

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

October 8, 2013

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. Should the subject property be granted an exemption under Indiana Code § 6-1.1-10-16 for 2011 because the property was predominantly used for charitable or religious purposes?

Procedural History

2. On November 19, 2010, the Petitioner filed a Form 136, Application for Property Tax Exemption, seeking a 100% exemption for its real property on the basis of religious and charitable use. On June 21, 2011, the Property Tax Assessment Board of Appeals (“PTABOA”) determined the property was 100% taxable for the 2011 assessment. On July 18, 2011, the Petitioner filed a Form 132, Petition to the Indiana Board of Tax Review for Review of Exemption, requesting that the Board conduct an administrative review of the exemption request.
3. The Board’s designated Administrative Law Judge (ALJ), Jennifer Bippus, held a hearing on June 20, 2013. She did not inspect the property.
4. The following witnesses were sworn:
 - Jesse Beasley, Pastor/President for the Petitioner,
 - John Swihart, Tax Exempt Deputy for the Allen County Assessor.¹
5. The Petitioner presented the following exhibit:
 - Petitioner Exhibit 1: 1966 Internal Revenue Service letter to Beasley Ministries Inc. dated June 7, 1966.
6. The Assessor presented the following exhibit:
 - Respondent Exhibit 1: Predominant Use Form and Rental Application.
7. The Board also recognizes the following items as part of the record of proceedings:
 - Board Exhibit A: Form 132 petition with attachments,
 - Board Exhibit B: Notice of Hearing dated May 15, 2013,
 - Board Exhibit C: Notice of Appearance by F. John Rogers,
 - Board Exhibit D: Hearing sign-in sheet.
8. The subject property is a single family, residential property located at 1512 McKinnie Avenue in Fort Wayne. The Petitioner claims the property is entitled to 100% exemption for religious and charitable use.

¹ Mr. Swihart did not testify.

Summary of the Petitioner's Case

9. The Petitioner is a church and has been a non-profit 501(c)(3) organization since 1966. The Petitioner has a copy of a letter from the Internal Revenue Service ("IRS") showing its tax exempt status.² *Beasley testimony; Pet'r Ex. 1.*
10. The Petitioner has more than 52 properties in Allen County. Four of the properties have homes on them. All of the Petitioner's other properties are tax exempt. The subject property should also be exempt. *Beasley testimony.*
11. The Petitioner purchases properties and works with the city to clean up the properties and make them safe places for people to live. The Petitioner maintains the properties and plans to build homes on them. The Petitioner will sell the properties to people in the church and make homeowners out of people who would not otherwise qualify for traditional loans. The properties are sold on a rent-to-own lease and require no down payment and no deposit. The Petitioner has done this with four properties already. The Petitioner anticipates that all of the properties, except for the church buildings, will return to the tax base in the future. *Beasley testimony.*
12. The Petitioner took title to the subject property in August 2010. The improvement was in very bad shape. The Petitioner renovated the property, but is having an extremely difficult time selling it. The Petitioner rented the property until a buyer could be found to offset its costs. The Petitioner never intended to rent properties or to produce residual income through rental properties. *Beasley testimony.*
13. The property is rented and occupied by people within the Petitioner's ministry. At least six people have occupied the property in the past eight or nine months. Renters are required to sign a lease agreement, but the Petitioner does not enforce the lease. The Petitioner adjusts the rent depending on the person occupying the property. One renter worked around the church to pay rent in lieu of paying cash rent. In June 2011, the

² The Internal Revenue Service letter, dated June 7, 1996, is addressed to Beasley Ministries Inc. c/o Jesse M. Beasley, not Living Word of God Ministries. *See Pet'r Ex. 1.* Mr. Beasley did not explain the relationship between Beasley Ministries Inc. and Living Word of God Ministries.

Petitioner provided the Allen County Assessor with a rental application, showing the property was rented for \$450 a month with a \$450 security deposit. *Resp. Ex. 1*. The property is currently rented to someone else for \$400 a month. *Beasley testimony*.

14. The property should be exempt because the Petitioner is a 501(c)(3) tax exempt organization. The property should not be singled out from the Petitioner's other properties just because it is a rental. The property is a tool of the ministry and has helped with the ministry needs of the community. *Beasley testimony*.

Summary of the Respondent's Case

15. The evidence demonstrates that the subject property is a rental property generating some kind of benefit to the Petitioner. The Petitioner owns other properties that are exempt, but the Board has made it clear that each parcel stands on its own. The exempt status of one property does not mean the Petitioner should assume or conclude that all of its properties will be exempt. *Rogers argument*.
16. A taxpayer is not entitled to a property tax exemption under Ind. Code § 6-1.1-10-16 simply because it is a 501(c)(3) income tax exempt entity. The Petitioner is applying for either a religious or charitable exemption. Therefore, it has the burden to show the property is used at least 51% of the time for a religious or charitable purpose. The Petitioner has not met its burden. *Rogers argument*.

Analysis and Discussion

17. "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." Ind. Code § 6-1.1-10-16(a). 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[.]" Ind. Code § 6-1.1-10-16(c).
18. The test used to determine whether all or a portion of a subject property qualifies for an exemption is the "predominant use" test. *St. Bd. of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). "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(a).

19. “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 Co. Assessor*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009). Every exemption case “stand[s] on its own facts” and on how the parties present those facts. *Id.* See also *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). The taxpayer bears the burden of proving that its property qualifies for an exemption.
20. The Petitioner offered very little evidence to demonstrate that its property meets the requirements of the statute. More specifically, the Petitioner focused on its status as a 501(c)(3) tax exempt entity as a basis for a property tax exemption. But the letter from the IRS grants Beasley Ministries Inc. exemption as a 501(c)(3) organization, not the Petitioner (i.e., Living Word of God Ministries). This distinction is significant because the Petitioner failed to explain how or if Beasley Ministries is related to the Living Word of God Ministries.
21. Moreover, even if one assumes that the Petitioner is related to or the same as Beasley Ministries Inc., the grant of a federal or state income tax exemption does not necessarily entitle a taxpayer to a property tax exemption. Indeed, an income tax exemption does not depend on how property is used, but on how money is spent. See *Raintree Friends Housing, Inc. v. Indiana Dep’t of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status does not automatically entitle a taxpayer to tax exemption).
22. Thus, the Board must look at the use of the property to determine whether an exemption should be granted. The subject property is currently used as rental property to offset the Petitioner’s costs. While the Petitioner contends that the subject property is a tool of the ministry and has helped with the ministry needs of the community, the Petitioner failed to

provide substantial evidence or even explain how renting the subject property to people within its ministry constitutes a charitable or religious purpose.

23. The Petitioner failed to show that its property was owned, occupied and predominately used for a charitable purpose for the 2011 assessment. 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

24. The Board finds in favor of the Respondent and upholds the PTABOA determination denying an exemption for the 2011 assessment.

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