

**STATE OF INDIANA  
Board of Tax Review**

HABITAT FOR HUMANITY OF ST. JOSEPH COUNTY, INC., Petitioner,	)	On Appeal from the St. Joseph County Property Tax Assessment Board of Appeals
	)	
v.	)	Petition for Review of Assessment Form 132
ST. JOSEPH COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS,	)	Petition Nos. 71-025-94-2-8-00099
	)	71-025-94-2-8-00098
	)	71-025-94-2-8-00097
Respondent.	)	71-025-94-2-8-00096
	)	71-025-94-2-8-00095
	)	71-025-94-2-8-00094
	)	71-025-93-2-8-00050

**Findings of Fact and Conclusions of Law**

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

**Issue**

Whether the land and improvements owned by Habitat for Humanity of St. Joseph County, Inc., (Habitat) qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16, for charitable purposes.

## **Findings of Fact**

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall be considered a finding of fact.
  
2. Pursuant to Ind. Code § 6-1.1-11-3, Habitat filed several applications for property tax exemption with the St. Joseph County Board of Review (BOR). Five applications were filed on May 4, 1993, seeking exemption for tax year 1993, and another six applications were filed on April 14, 1994, for tax year 1994. The BOR denied the applications for 1993 on February 11, 1994, and denial of the 1994 applications was issued on August 31, 1994. Habitat was given proper notice of denial for all applications.
  
3. Pursuant to Ind. Code § 6-1.1-11-7, Habitat filed multiple Form 132 petitions seeking a review of the BOR action by the State for both years. The Form 132 petition for the 1993 applications was filed on March 2, 1994. Six individual Form 132 petitions were filed for the 1994 applications on September 20, 1994.
  
4. Pursuant to Ind. Code § 6-1.1-15-4, an administrative hearing was scheduled for June 10, 1996. Notice of said hearing was mailed on May 29, 1996, to Habitat at the address listed on the petition for 1993. No one appeared for this hearing.
  
5. A second hearing was scheduled for July 12, 1996, with notice being mailed to the address listed on the 1994 petitions on June 27, 1996. Once again, neither the Petitioner nor its representative appeared at the hearing.
  
6. The Petitioner and its representative did not contact the State or the hearing officer prior to either of the scheduled hearing dates and did not request a continuance of the hearing.

7. The Hearing Officer verified that the notices were not returned to the State as not deliverable. Notice was mailed to the only available addresses for the Petitioner supplied to the State on the applications and petitions for review. Without further information, the State was unable to contact the Petitioner and arrange a hearing on the petition.

### **Conclusions of Law**

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

### **Burden**

2. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
3. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
4. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

### **Constitutional and Statutory Basis for Exemption**

5. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
6. Article 10, Section 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. In this appeal, the Petitioner seeks exemption under Ind. Code § 6-1.1-10-16, which provides that property is exempt from property taxation if it is owned, used, and occupied for educational, literary, scientific, religious, or charitable purposes.
7. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemption. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how the property is used but on how much money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996)(501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominately used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

### **Basis of Exemption and Burden**

8. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
9. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).

10. Strict construction construes exemption from the concept of the taxpayer citizen. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners (NAME)*, 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt would otherwise have paid, and this should never be seen as an inconsequential shift.
11. This is why worthwhile activities or noble purpose is not enough to justify tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
12. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).
13. The Form 132 petition is denied for the failure of the taxpayer or its representative to appear at the administrative hearing and present evidence in support of their contention that they are eligible for an exemption from property tax.

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

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Chairman, Indiana Board of Tax Review