

REPRESENTATIVES FOR PETITIONER: Mr. Paul Wehr, Secretary, Order of the Owls, Nest #30

REPRESENTATIVES FOR RESPONDENT: Mr. Khris Seger, Hearing Officer, Vanderburgh County

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ORDER OF THE OWLS,)	
NEST #30,)	Petition No.: 82-028-96-2-8-00138
)	
Petitioner)	County: Vanderburgh
)	
v.)	Township: Pigeon
)	
VANDERBURGH COUNTY)	Parcel No.: 11-400-26-007-019
BOARD OF REVIEW,)	
)	
Respondent .)	Assessment Year: 1996
)	

Appeal from the Final Determination of
Vanderburgh County Board of Review

December 3, 2002

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The 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. The issue presented for consideration by the Board was:
ISSUE 1 – Whether the real property owned by the Order of the Owls, Nest #30 is entitled to 100% property tax exemption rather than 89% property tax exemption.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, the Order of Owls, Nest #30 (Petitioner) filed a Form 132 petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on August 8, 1997. The determination of the County Board was issued on July 25, 1997. The County Board granted 89% property tax exemption.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on November 16, 2000 at Evansville, Indiana before Hearing Officer Sandra Oakes.
4. The following persons were present at the hearing:
For the Petitioner: Mr. Paul Wehr, Secretary

For the Respondent: Mr. Khris Seger, Hearing Officer
5. The following persons were sworn in as witnesses and presented testimony:
For the Petitioner: Mr. Paul Wehr

For the Respondent: Mr. Khris Seger

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – Articles of Incorporation.

Petitioner's Exhibit 2 – 1995 Financial Statements.

Petitioner's Exhibit 3 – A list of activities conducted at the subject property.

Petitioner's Exhibit 4 – A copy of the 1938 Form 136, Application for Property Tax Exemption.

Petitioner's Exhibit 5 – By-laws for Order of the Owls.

For the Respondent:

Respondent's Exhibit A – Memorandum in Response to Form 132 with the following attachments:

1. Exemption Memorandum dated June 1, 1997 from Mr. Seger to Ms. Cheryl Musgrave presenting the recommendation regarding the Owls exemption request.
2. Determination of Taxable Assessed Value.
3. A breakdown, by room, of the activity conducted, the frequency of occurrence, and the total hours of use.
4. A memorandum from Mr. Seger regarding the County Board's July 17, 1997 action.
5. Minutes from the June 6, 1997 and July 17, 1997 County Board meetings.
6. The subject property's property record card.

Jurisdictional Framework

7. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions,

including all case law pertaining to property tax assessment or matters of administrative law and process.

8. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Constitutional and Statutory Basis for Exemption

9. 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.
10. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, the Petitioner claims exemption under Ind. Code § 6-1.1-10-16 which provides that all or part of a building is exempt from property taxes if it is owned, occupied, and used for charitable purposes.
11. In Indiana, the fact that a nonprofit entity owns the property under examination 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 property is used but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 81 - (Ind. Tax 1996)(501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

13. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

14. 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).
15. 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*, 671 N.E. 2d 218 (Ind. Tax 1996)(NAME). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
16. This is why worthwhile activities or noble purpose is not enough for 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)).
17. 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).
18. As a condition precedent to being granted an exemption under the charitable or educational purpose clause of the statute, the taxpayer must demonstrate that it provides "a present benefit to the general public . . . sufficient to justify the loss of

tax revenue." *Name*, 671 N.E. 2d at 221 (quoting *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff'd* 571 N.E. 2d 1247 (Ind. 1991)).

State Review and Petitioner's Burden

19. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
20. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
21. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
22. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind. 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax 2002).

23. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issues

ISSUE 1: *Whether the real property owned by the Petitioner is entitled to 100% property tax exemption rather than 89% property tax exemption.*

24. The Petitioner contends that the subject property is entitled to 100% property tax exemption.
25. The Respondent contends that only 89% of the subject property is entitled to property tax exemption.
26. The applicable statute governing Issue 1 is:

Ind. Code § 6-1.1-10-36.3(b)(3):

Property that is predominately 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.”

27. Evidence and testimony considered particularly relevant to this determination include the following:

[A] The club is a fraternal organization open to members and not to the general public.

[B]The purposes stated in the club’s Articles of Incorporation include, in addition to traditional charitable functions, “to assemble for mutual pleasure and amusement.”

[C] The area identified as “Alcohol Storage” is used to store both non-alcoholic and alcoholic beverages as well as other supplies such as janitorial supplies.

[D] The property serves multiple social functions on behalf of the club members, including a site for parties for the children of club members and their friends and a room in which various club committees meet. The stated activities listed by Petitioner are: “dances, bingo games, meetings and some special events. “

[E] The 11% taxable amount of the assessment represents the “Club Room/Bar” and “Alcohol Storage”.

Analysis of ISSUE 1

28. Respondent does not dispute that the subject property is predominantly used for charitable purposes and therefore qualifies for a partial exemption from property tax purposes, in this case an exemption of 89%.
29. The Petitioner argues that the subject property is entitled to 100% property tax exemption because the entire building, including the “Club Room/Bar” and “Alcohol Storage”, is used to support the Petitioner’s charitable purposes.

30. The Petitioner provided testimony that the income derived from the sale of food and beverages through the “Club Room/Bar” is used to defray its operating costs. The financial reports submitted by the Petitioner show this income as received into a sinking fund from which general operating expenses are paid.

31. Petitioner relies on *State Board of Tax Commissioners v. Indianapolis Lodge #17*, 245 Ind. 614, 3 Ind. Dec. 615, 200 N.E. 2d 221 (1964), in which the Court held that, if the proceeds from the sale of food are used to reduce expenses of the charitable organization, the area used for food service qualifies for exemption. However, the *Indianapolis Lodge* case preceded the enactment of IC § 6-1.1-10-36.3(b)(3), in 1983, which requires the application of what is often referred to as the “predominant use” test recognized in *State Board of Tax Commissioners v. New Castle Lodge #147*, 765 N.E. 2d 1257 (Ind.2002).

32. The testimony offered by the Petitioner also indicated that the “Alcohol Storage” area is used for general storage and is not isolated to alcoholic beverages alone. This testimony is probative of the exemption claim because property used in a manner that is reasonably necessary to the maintenance of an organization’s exempt purposes qualifies for exemption. *LeSea Broadcasting Corp. v. State Board of Tax Commissioners*, 525 N.E. 2d 637 (Ind. 1988).

33. The Petitioner’s evidence does not support a 100% exemption using the “predominant use” test.

34. The Respondent, referencing *Indianapolis Elks*, argues that 11% of the assessment, represented by the “Club Room/Bar” and “Alcohol Storage” area, is taxable because it is used primarily for social and recreational purposes. The Respondent presented the testimony of its hearing officer, a calculation of the taxable assessed value, a room-by-room use detail including the type of activity and the frequency of occurrence of each activity, and the minutes from the County Board hearings in support of its position.

35. The testimony by the Respondent that the “Club Room/Bar” and “Alcohol Storage” areas are used primarily for social and recreational purposes is based on the observations of the County Board’s Hearing Officer made at his site visit and upon discussions with Petitioner’s representative, Mr. Wehr.

36. The calculation of taxable assessed value and the room-by-room detail provides some insight regarding the number of hours used for general activities. Using a room-by-room detail to determine the amount of taxable assessed value is an accepted practice. However, this method of determining the taxable assessment is dependent upon a proper recording of the total hours a building is used for any purpose and a detailed list of the amount of time the building is used for specific activities – both exempt and non-exempt in nature. Because this evidence does not take into account the total number of hours the building is used for any purpose and lacks detail regarding the type of activity, this evidence does not produce a clear as a picture of the percentage of time the subject areas are used for non-exempt purposes or exempt purposes as might be desired. However, Petitioner presents no alternative analysis that offers a clearer or more detailed breakdown of the facility’s usage.

37. Petitioner does not dispute that one of the uses and purposes of the facility is for the recreation and amusement of its members. Therefore, some portion of the facility would be subject to property taxation under the pre-dominant use analysis. Respondent has presented evidence of the multiple uses of the facility, including a modest portion of the facility that, based on the observations of the Respondent’s representative, is primarily used for social and recreational purposes. The determination of an 89% exemption is upheld.

Summary of the Issue

38. The issue is whether the property is entitled to 100% property tax exemption rather than 89% property tax exemption.
39. The property is used primarily but not exclusively for charitable purposes. The current 89% property tax exemption is affirmed.

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

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.