

**STATE OF INDIANA
Board of Tax Review**

VILLA BAPTIST CHURCH,)	On Appeal from the Marion County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment
)	Form 132
MARION COUNTY PROPERTY TAX)	Petition No. 49-101-96-2-8-00001
ASSESSMENT BOARD OF APPEALS,)	Parcel No. 1095265
)	
Respondent.)	

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 Villa Baptist Church qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for religious 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, Villa Baptist Church (Villa Baptist) filed an application for property tax exemption with the Marion County Board of Review (BOR) on March 21, 1996. The BOR granted 50% exempt status to the property on May 17, 1996, and gave Villa Baptist proper notice of the decision.
3. Pursuant to Ind. Code § 6-1.1-11-7, Villa Baptist filed a Form 132 petition seeking a review of the BOR action by the State. The Form 132 petition was filed July 10, 1996.
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 14, 1997, before Hearing Officer Kay Schwade. Although formal written notice was provided, no representatives from either side appeared.
5. At the hearing, the subject Form 132 petition and attachments were made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. No further evidence was submitted for consideration.
6. The subject property is located at 2717-2719 South Randolph Street, Indianapolis, Indiana, Marion County, Center Township.
7. The Hearing Officer did not view the property.
8. The property in question is a duplex owned by Villa Baptist. According to the County Auditor's statement on the Form 132 (Board Exhibit A), the church pastor occupies one half of the duplex, and the remaining half is by Villa Baptist's staff. Previously, the County BOR had granted the subject property a 50% exempt status for the half of the building occupied by the pastor, but denied exemption for the half used by the staff.

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.

A. Burden In General

2. The courts have long recognized that in the administrative review process, the State is clothed with quasi-judicial power and the actions of the State are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State Board has the ability to decide the administrative appeal based upon the evidence presented.
3. In reviewing the actions of the County Board (or 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).
4. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
5. If the taxpayer is not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.

6. 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).
7. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.

B. Constitutional and Statutory Basis for Exemption

8. 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.
9. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, exemption is claimed 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 educational or religious purposes.
10. For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

C. Basis of Exemption and Burden

11. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
12. 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).

13. 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). 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.
14. 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. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 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)).
15. 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).
16. The term “religious” generally has reference to man’s relationship and belief in a supernatural or superhuman being that exercises power over human beings by imposing rules of conduct with future rewards and punishments. See *City Chapel Evangelical Free Inc. v. City of South Bend*, 744 N.E. 2d 443 (Ind. 2001)(“worship” is the act of paying divine honors to the Supreme Being); *Grutka*

v. Clifford, 445 N.E. 2d 1015 (Ind. App. 1983)(ecclesiastical matters are those which concern doctrine, creed, or form of worship of the church); *Minersville School District v. Gobitis*, 108 F. 2d 683 (3d Cir. 1939); *McMasters v. State of Oklahoma*, 21 Okla. Crim. 318, 207 P. 566 (Okla. Crim. App. 1922).

D. Conclusions Regarding the Exemption Claim

17. “It is well established that statutes exempting property from taxation are to be strictly construed in favor of the tax, and the burden is upon the one claiming the exemption to show that the property clearly falls within the exemption statute.” *LeSea Broadcasting v. State Board of Tax Commissioners*, 525 N.E. 2d 637, 638 (Ind. Tax 1988), citing to *Seventh-Day Adventists*, 512 N.E. 2d at 938.
18. With regard to the appeal at hand, Villa Baptist has failed to submit any evidence regarding the subject property. However, given the signed statements included with the original petition, there is no question of fact as to the use of the property. Both Villa Baptist and the County Auditor state that the property is used as previously stated: half is occupied by the pastor, and the other half is used by church staff.
19. Given these facts, the question is whether the use by the staff can be found to be “reasonably necessary” to Villa Baptist’s religious purpose. The property is used only for church-related purposes. Nowhere is there any indication of any use external to the religious purpose.
20. Given that the subject property is used solely in support of the church’s religious purpose, it is found to be “reasonably necessary” to that purpose. As such, the subject property is found to be wholly exempt from property taxation for the year under appeal.

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.

Chairman, Indiana Board of Tax Review