

**STATE OF INDIANA
Board of Tax Review**

Westwood Homeowners Association, Inc.)	On Appeal from the Tippecanoe County Property Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Review of Exemption, Form 132
v.)	Petition No. 79-015-96-2-8-00014*
)	Parcel No. 122073000027
TIPPECANOE COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	
APPEALS)	
)	
Respondents.)	

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 property owned by Westwood Homeowners Association, a water utility, qualifies for property tax exemption.

* The petition number has been changed to reflect the proper year of appeal.

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 herein shall be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, the Westwood Homeowners Association Inc. (Westwood) filed an Application for Exemption (Form 136) on April 12, 1996. The PTABOA denied the exemptions on November 20, 1996, and gave the Petitioner notice of the denial.

3. Pursuant to Ind. Code § 6-1.1-11-7, Westwood filed a Petition for Review of Exemption, Form 132, with the State seeking a review of the PTABOA action. The Form 132 petition was filed on December 17, 1996.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 18, 1999, before Hearing Officer Angela Smith-Jones. Testimony and exhibits were received into evidence. Cecil Blignaut was present for the Petitioner. Harold Red Strange represented the County.

5. At the hearing, the Form 132 petition was labeled as Board Exhibit A. The Notice of Hearing was labeled as Board Exhibit B. The following exhibits were entered into evidence:

Petitioner Exhibit 1 – statement regarding petitioning corporation

Petitioner Exhibit 2 – information regarding water utility including maps and diagrams

Petitioner Exhibit 3 – copies of petition forms and denial

Petitioner Exhibit 4 – plat map of subdivision

Petitioner Exhibit 5 – Articles of Incorporation for the Westwood Homeowners Association, Inc.

Petitioner Exhibit 6 – By-Laws of the Westwood Homeowners Ass'n.

Petitioner Exhibit 7 – plat map of subject parcel

Petitioner Exhibit 8 – historical documents of Association regarding the water utility

Petitioner Exhibit 9 – photos of subject property

6. At the hearing, the Hearing Officer requested additional evidence from the Respondent. The information was due by May 28, 1999.
7. On May 20, 1999, the Hearing Officer received the requested additional evidence from the respondent. The information consisted of the minutes from the Tippecanoe County Board of Review meeting on November 19, 1996, and was made a part of the record as Respondent Exhibit A.
8. The subject property is located at 6015 State Road 26 West, West Lafayette, Indiana, Tippecanoe County, Shelby Township.
9. At the hearing, Mr. Blignaut testified to the following:
 - (a) The homeowners association functions purely as a non-profit water utility and has no other purpose or function;
 - (b) The association purchased the utility in 1987 and has operated it ever since;
 - (c) The sole purpose of the association is to provide potable water to the Westwood subdivision;
 - (d) The utility is monitored by various regulatory bodies including the Indiana Department of Environmental Management (IDEM); and
 - (e) The only improvement to the subject land is the pump house for the utility.

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. 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). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
3. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State Board 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)).
4. 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.
5. 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).

B. Constitutional and Statutory Basis for Exemption

6. 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.
7. 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.
8. 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

9. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
10. 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).
11. 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.

12. 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)).
13. 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).
14. As a condition precedent to being granted an exemption under the 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.” *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 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)).

D. Conclusions Regarding the Exemption Claim

15. The rules for exemption of water utilities are laid out in Ind. Code §§ 6-1.1-10-6 and 6-1.1-10-7. In the matter at hand, Ind. Code § 6-1.1-10-7 is the provision of concern. It states “Property is exempt from property taxation if it is owned by a non-profit corporation which is engaged in the sale and distribution of water.” Therefore, in deciding the exemption status, Westwood must prove two distinct

facts: 1) that the corporation which owns the land in question is “engaged in the sale and distribution of water”, and 2) that the corporation is a non-profit entity.

16. The corporation clearly operates as a utility, having purchased it from the previous owner who also operated this facility as a utility. This is borne out by various documents submitted by Westwood, including a Utility history. Therefore, the only question remaining is whether Westwood is truly non-profit.
17. As part of Petitioner Exhibit 8, the Petitioner submits an Indiana State Certificate of Incorporation which confirms Westwood Homeowners Association as a non-profit entity. Furthermore, it states in Article II of the Articles of Incorporation (see Petitioner Exhibit 5) that the organization is to “[f]unction as a not-for-profit utility pursuant to Ind. Code § 8-1-2-125.”
18. Therefore, having proven that Westwood meets the requirements found in Ind. Code § 6-1.1-10-7, the exemption is granted.

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