

REPRESENTATIVE FOR PETITIONER: Robert Bastian, Trustee, Ft. Miami Detachment
Marine Corps League, Inc.,

REPRESENTATIVE FOR RESPONDENT: F. John Rogers, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

FT. MIAMI DETACHMENT)	Petition No.: 02-041-05-2-8-00003
MARINE CORPS LEAGUE, INC.,)	
)	Allen County
Petitioner,)	
)	Adams Township
v.)	
)	Parcel No.: 02-13-10-401-016.000-041
ALLEN COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	Assessment Year: 2005
APPEALS,)	
)	
Respondent.)	
)	

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

December 21, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments in this case. The Board now enters findings of fact and conclusions of law on the following question: Is the subject real and personal property used for purposes that make it fully exempt from property tax under Ind. Code § 6-1.1-10-16?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. Ft. Miami Detachment Marine Corps League, Inc. (Ft. Miami), owns the subject real estate and personal property. It is located at 7500 US 930 East, Fort Wayne, Indiana.
2. On May 12, 2005, the Petitioner filed an Application for Property Tax Exemption (Form 136) for the 2005 assessment year requesting 100% exemption for the real and personal property. It claimed exemption based on charitable use pursuant to Ind. Code § 6-1.1-10-16 and “other—chartered under a federal not-for-profit organization” without citing any specific statute.
3. The Property Tax Assessment Board of Appeals (PTABOA) issued its determination on August 25, 2006, allowing 60% exemption on the real and personal property.¹
4. On September 22, 2006, the Petitioner filed a Petition for Review of Exemption (Form 132) seeking an administrative review of the PTABOA’s determination. This filing claimed a fraternal exemption under Ind. Code § 6-1.1-10-16 and “other—veterans organization.” It did not indicate a charitable exemption claim. The most relevant portion of the Form 132 (grounds for appeal) states:

Pursuant to IC 6-1.1-15-3, you must identify specific reasons why the exemption determination by the County Board of Tax Assessment Board of Appeals is believed to be incorrect. Use the following lines to explain the specific reasons WHY you believe the action by the PTABOA is incorrect. Cite to applicable law or regulation.

Assessment Board believes bingo & rentals are open to public & they actually are not according to by-laws any person can visit the league for

¹ This action is documented on Form 120, page 1, which was attached to the Form 132 Petition, Board Exhibit A. But page 2 of the Form 120, which should have explained the basis for the PTABOA determination, was not included. Furthermore, neither party clearly explained the precise basis upon which the 60% exemption was allowed. The Board can perhaps infer that the PTABOA allowed the partial exemption based on charitable use, but whatever the reason was, it would not change the final determination in this case.

two visits. After 2nd visit they cannot play bingo unless they become members.

Even people who eat lunch daily at the league has [sic.] to be a member.

Hearing Facts and Other Matters of Record

5. Patti Kindler, the designated Administrative Law Judge, held the hearing in Ft. Wayne on September 27, 2007. She did not conduct an on-site inspection of the property.
6. The following persons were sworn and presented testimony at the hearing:
For the Petitioner – Robert Bastian, Trustee,
For the Respondent – Kimberly Klerner, Exemption Deputy.
7. The Petitioner did not present any exhibits, but did refer to Form 132 attachments that include a letter to the assessor and copies of membership applications.
8. The Respondent presented the following exhibits:
Respondent Exhibit 1 – Position Statement,
Respondent Exhibit 2 – Property record card,
Respondent Exhibit 7 – Form 136 Application for 2006 Exemption,
Respondent Exhibit 8 – Notice of Action on 2006 Exemption Application,
Respondent Exhibit 9 – Instructions for determining predominate use,
Respondent Exhibit 10 – Sketch of building with measurements and interior use calculations,
Respondent Exhibit 13 – Room-by-room usage,
Respondent Exhibit 14 – Indiana Bingo and/or Pull Tab License Financial Report,
Respondent Exhibit 15 – Photographs of signs for the subject property,
Respondent Exhibit 16 – Reception facility package plan.²

² No Exhibit 3, 4, 5, 6, 11, or 12 was submitted.

9. The following additional items are officially recognized as part of the record of proceedings:

- Board Exhibit A – Form 132 with attachments,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Hearing sign-in sheet,
- Board Exhibit D – The Board’s Pre-hearing Exemption Order,
- Board Exhibit E – Notice of Appearance by F. John Rogers.

Contentions

10. The Petitioner contends it is a not-for-profit organization and should be exempt from property taxation. The Petitioner offered the following points in support of its case:

- a) The facilities are not open to the general public. Club members must show identification cards upon entering the facility. Members may bring a guest twice to play bingo, dine, or participate in any other event. Such visits are recorded in a guest book. The guest must then complete an application to join the organization and pay membership dues as a junior or a regular member before being permitted to attend additional functions. The Sword and Saber Lounge is for members only. The reception facility is free to club members. There have been only six or seven receptions in the past few years. They are not a significant usage for the building. None of the evidence (such as photographs of the exterior signs) indicates the facility is open to the general public. *Bastian testimony.*
- b) The standard membership for former Marines is around \$25 to \$30 per year and includes voting rights. Junior memberships, which do not include voting rights, are \$5 per year. A junior member is not required to be a current or former Marine or related to a Marine. The junior membership is authorized by the National Marine Corps League’s administrative procedures. It has helped Ft. Miami increase membership, raise money and support the community. The Respondent has incorrectly characterized junior membership fees as a cover charge, which is a fee

- required to be paid each time an individual attends an event. In contrast, the one-time annual membership fee grants the junior member unlimited access to the facility and its functions including bingo, band nights, and baseball. *Bastian testimony.*
- c) Bingo games take place three times a week. *Bastian testimony.*
 - d) The records used to prepare the Indiana Annual Bingo and/or Pull Tab License Financial Report are inaccurate. An employee misappropriated funds and records before his termination in November of 2005. *Bastian testimony.*
 - e) Ft. Miami benefits the community not only through veterans programs, but also through programs such as Toys for Tots, Big Brothers and Sisters, youth basketball and baseball, ABATE, the Vet Center at the Veteran's Hospital and many more. Ft. Miami also helps the needy, those without shelter, and former veterans. *Bastian testimony; Board Ex. A.*
11. The Respondent contends that only 60% of the land, improvements and personal property is exempt for the 2005 assessment. The Respondent offered the following points in support of its case:
- a) The PTABOA allowed a 60% exemption on the subject real and personal property for 2005, but county officials did not perform a complete analysis of the predominate use until they reviewed the property for the 2006 exemption application. *Klerner testimony.*
 - b) The biggest areas of the building include a non-smoking bingo room, a smoking bingo room, the bar-lounge, and the kitchen. Smaller areas include the foyer/hallway, offices, storage, restrooms, and mechanical room. The Respondent provided specific square footages for each of these areas. *Resp't. Ex. 10, 13.* The Respondent also provided a list of uses for some of the areas. Other than 15 hours per week for bingo, the amount of the uses was not specified. *Resp't. Ex. 13.*

- c) The property is used for bingo with an average attendance of 225 persons each night. *Rogers argument; Resp't Ex. 1.* The Indiana Annual Bingo License Financial Report shows that Ft. Miami offers bingo throughout the year and earns revenue on the gaming. *Klerner testimony; Resp't Ex. 14.*
- d) The overwhelming use of the facility is for the general public to participate in bingo activities three nights a week. Individuals can use this facility by paying a small annual fee. The nominal fee is an effort to disguise the public use of the facility. Therefore, it is not exclusively used for the Petitioner's purposes as a charitable or fraternal organization. The core of the Respondent's position is that the \$5 junior membership fee to join Ft. Miami resembles a cover charge. It is simply not enough to justify an exemption for the property. *Rogers argument.*
- e) There is no evidence that Ft. Miami rents the reception hall solely to its members. The signs advertising the reception hall, bingo events and the bar and grill advertise to the general public and do not say anything about only members attending or using the facility. Further, the reception facility package plan does not exclude the public. It advertises the facility without restriction. *Klerner testimony; Resp't Ex. 15, 16.*

Basis of Exemption and Burden

12. All real and personal property in Indiana generally is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must provide statutory authority for any such exemption.
13. A taxpayer seeking an exemption bears the burden of proving that the property is entitled to it by showing the property falls specifically within statutory authority for an exemption. *See College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 908

(Ind. Tax Ct. 2006); *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass'n of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Analysis

14. As previously noted in the procedural history of this case, the precise statutory basis for the Petitioner's exemption claim is ambiguous. The initial application claimed charitable use exemption pursuant to Ind. Code § 6-1.1-10-16 and also referenced being a federal not-for-profit organization. The petition to the Board does not claim charitable use, but rather, it claimed fraternal exemption pursuant to Ind. Code § 6-1.1-10-16 and also referenced being a veterans organization. Unfortunately, neither party focused on exactly what the statutes say, which should be the starting point for any proper exemption determination. This situation makes it difficult for the Board to understand the nature of the Petitioner's claim or the reason that the PTABOA allowed any exemption.
15. The Petitioner failed to point to any statute that would grant exemption for its property because it is a not-for-profit organization or because it is a veterans organization. *See College Corner*, 840 N.E.2d at 911. Consequently, even if those allegations are true, neither fact supports making the subject property entirely exempt.
16. The most relevant parts of Ind. Code § 6-1.1-10-16 are:
 - (a) 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.
 - (b) A building is exempt from property taxation if it is owned, occupied, and used by a town, city, township, or county for educational, literary, scientific, fraternal, or charitable purposes.
17. "Fraternal" purposes are mentioned in subsection (b) of the exemption statute, but that subsection only applies to a town, city, township or county. The Petitioner does not fit

into any of those categories. Therefore, the “fraternal” purposes exemption provided there is not available to the Petitioner.

18. The only part of the Petitioner’s claim that might be viable is the one based on Ind. Code § 6-1.1-10-16, which requires use for charitable purposes.

19. A charitable exemption is subject to the “predominate use” test. *State Bd. of Tax Comm’rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). The relevant part of Ind. Code § 6-1.1-10-36.3 states:

(a) For purposes of this section, property is predominately 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.

(c) (3) Property that is predominantly 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.

20. While the record contains a few conclusory statements and a little anecdotal evidence about charitable projects the Petitioner has done at some unspecified time in the past to benefit the community (such as supporting Toys for Tots, Big Brothers and Big Sisters, youth basketball and baseball), the record lacks probative evidence that the exempt use of this property in 2005 was anything more than the 60% already allowed by the PTABOA.³ A taxpayer who attempts to claim exemption with such a de minimis showing fails to meet its burden. *See New Castle Lodge*, 765 N.E.2d at 1264.

³ This statement should not be construed to imply that the Board finds any charitable use whatsoever. The justification of the 60% exemption already allowed by the PTABOA was not disputed. The Board specifically makes no determination about it.

21. The bingo operations clearly constituted a substantial part of the use of this property. Neither party offered any substantial evidence or explanation to establish how the bingo operations might be charitable. The Respondent offered a copy of an “Indiana Annual Bingo and/or Pull Tab License Financial Report” that states it covers the period from May 1, 2004 to April 30, 2005. This copy is not signed and does not appear to be the complete document. Furthermore, the Petitioner repudiated the information on it. That financial report has no probative value. No evidence shows that the Petitioner actually conducted its bingo operations as “charitable gaming events” or that the Petitioner was properly licensed to do so. *See* Ind. Code § 4-32-9 (repealed by P.L. 91-2006, Sec. 15). In this case, nothing establishes that the bingo operation should be considered charitable use. Furthermore, even if it did, nothing establishes that the 60% exemption already allowed does not account for it.
22. Both the Petitioner and the Respondent focused primarily on whether the subject property is used by the general public or is limited to being used by members. Neither party, however, offered any substantial explanation for the relevance of this point to charitable use. Neither party related this point to any statutory provision or case law about charitable use or any other statutory exemption. The testimony and arguments about public use are not probative or relevant to the outcome of this case.

Summary of Final Determination

23. The Petitioner failed to make a prima facie case for any change regarding its exemption. The request for 100% exemption is denied.

The Indiana Board of Tax Review issues this Final Determination on the date first written above.

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>>