

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.: 02-041-06-2-8-00007
MARINE CORPS LEAGUE, INC.,)	
)	Allen County
Petitioner,)	
)	Adams Township
v.)	
)	Parcel No. 02-13-10-401-016.000-041
ALLEN COUNTY PROPERTY)	a/k/a Parcel No. 50-0029-2017
TAX ASSESSMENT BOARD OF)	
APPEALS,)	Assessment Year: 2006
)	
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 its findings of fact and conclusions of law on the following question: Is the subject real and personal property entitled to exemption from property taxation for 2006 where the application for exemption was not filed until July 20, 2006?

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. The Petitioner filed an Application for Property Tax Exemption (Form 136) for the 2006 assessment on July 20, 2006. On this form, the Petitioner claimed exemption under Ind. Code § 6-1.1-10-25.
3. On October 5, 2006, the Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the property is 100% taxable.
4. On October 18, 2006, the Petitioner filed a Petition for Review of Exemption (Form 132). On this document, the Petitioner requested 100% exemption for the subject real and personal property under Ind. Code § 6-1.1-10-16 because it is a fraternal and/or veterans organization.

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 plans.¹

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 on Petition,
 - 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 should be exempt from property taxation. The Petitioner offered the following points in support of its case:
 - a) The Petitioner did not file its 2006 Application for Property Tax Exemption (Form 136) on time. The PTABOA, however, did not hear Ft. Miami’s prior petitions in a

¹ No Exhibit 3, 4, 5, 6, 11, or 12 was submitted.

- timely manner. Ft. Miami should not be held to strict standards while the PTABOA is not. *Bastian testimony.*
- b) 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.*
- c) 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.*
- d) Bingo games take place three times a week. *Bastian testimony.*
- e) 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.*

f) 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 no exemption should be allowed for 2006. The Respondent offered the following points in support of its case:

a) Applications for property tax exemption must be received by May 15 of any given year. The time for filing the 2006 exemption application had elapsed when the Petitioner filed this one on July 20, 2006. *Rogers argument; Resp't Ex. 7.*

b) The PTABOA determined Ft. Miami used the property for a nonexempt purpose more than 50% of the time during 2006, but it should have denied the exemption based on late filing of the application. *Klerner testimony.*

c) 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.*

d) 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.*

e) 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*.

- f) 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).
14. An exemption is a privilege that may be waived by a person who would otherwise qualify for it. Ind. Code § 6-1.1-11-1. If the Petitioner does not comply with the statutory

procedures for obtaining an exemption, the exemption is waived. *Id.*; *Gulf Stream Coach v. State Bd. of Tax Comm'rs*, 519 N.E.2d 238, 242 (Ind. Tax Ct. 1988).

Analysis

15. In order to obtain an exemption, a property owner must file a written application on or before May 15 of the year for which it seeks the exemption. Ind. Code § 6-1.1-11-3(a). The requirement to file by May 15 of the year in which property is assessed allows the tax to be calculated (accounting for any exemption) and notice to be sent out prior to the first installment payment due date. *Indiana C.A.P. Directors Ass'n v. Dep't of Local Gov't Fin.*, 797 N.E.2d 878, 880 (Ind. Tax Ct. 2003).
16. The Petitioner's application was required to be filed by May 15, 2006, but it was not filed until July 20, 2006. The Petitioner acknowledged that fact, but argued it should not be held to strict standards because the PTABOA did not hear Ft. Miami's prior petitions in a timely manner. The plain language of Ind. Code § 6-1.1-11-3(a) makes no such exception.
17. The Petitioner's failure to timely file the exemption application is determinative in this appeal. The exemption claim is denied.

Summary of Final Determination

18. The Petitioner did not file its application for exemption within the time allowed. The property will remain 100% taxable.

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

- 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>>