

REPRESENTATIVES FOR PETITIONER:

Eugene T. Zinkiewicz, Financial Officer, American Legion Post #82

REPRESENTATIVES FOR RESPONDENT:

F. John Rogers, Attorney, Allen County Property Tax Assessment Board of Appeals

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

AMERICAN LEGION POST #82,	)	Petition No.:	02-073-04-2-8-00022a
	)		
Petitioner,	)	Parcel No.:	80-0027-2016
	)		
v.	)	County:	Allen
	)	Township:	Washington
ALLEN COUNTY	)		
PROPERTY TAX ASSESSMENT	)		
BOARD OF APPEALS,	)	Assessment Year:	2004
	)		
Respondent.	)		

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

**January 17, 2007**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (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 parties presented two issues, which the Board combines and restates as follows:

*Whether the subject property qualifies for 75% exemption from property taxation pursuant to Ind. Code § 6-1.1-10-25 and/or Ind. Code § 6-1.1-10-16.*

### **PROCEDURAL HISTORY**

2. On or about May 5, 2004, the Petitioner, American Legion Post #82 (Petitioner), filed a Form 136 Application for Property Tax Exemption. The Allen County Property Tax Assessment Board of Appeals (PTABOA) mailed notice of its determination, indicating that the subject property is 100% taxable, on December 10, 2004. On January 10, 2005, pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Form 132 Petition for Review of Exemption (Form 132 Petition), petitioning the Board to conduct an administrative review of the denial of its application for exemption. Subsequent to the Petitioner filing its Form 132 petition, the PTABOA conducted a site visit. As a result of that site visit, on July 25, 2005, the PTABOA mailed a revised determination granting a 65% exemption to the subject land, improvements, and personal property.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was originally scheduled for June 22, 2006. The Petitioner failed to appear for the scheduled hearing, and the Board issued an Order of Dismissal on July 3, 2006. On July 17, 2006, the Petitioner filed an objection to the Order of Dismissal, and showed cause as to why it failed to appear for the hearing. On July 18, 2006, the Board issued its Notice of Intent to Rehear Petition. The Board issued notices of hearing to the parties on September 18, 2006.

4. An administrative hearing was held on October 26, 2006, in Fort Wayne, Indiana before Joseph Stanford, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2.

5. The following persons were present at the hearing:

For the Petitioner:

Eugene T. Zinkiewicz, Financial Officer, American Legion Post #82

For the Respondent:

F. John Rogers, Attorney, Allen County PTABOA  
Kimberly Klerner, Allen County PTABOA Deputy

6. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Eugene T. Zinkiewicz, Financial Officer, American Legion Post #82

For the Respondent:

Kimberly Klerner, Allen County PTABOA Deputy

7. The following exhibits were offered and admitted:

Petitioner

<u>No.</u>	<u>Description</u>
1	Listing of groups that use the subject property's dining and banquet areas
2	Financial statements for American Legion Post #82 for the period ending September 30, 2006

Respondent

<u>No.</u>	<u>Description</u>
1	Notice of Hearing on Petition
2	List of witnesses and exhibits
3	Letter to Petitioner listing Respondent's witnesses
4	Respondent's position statement
5	Petitioner's application for property tax exemption
6	Form 132 Petition
7	Notice of Action on Exemption Application, mailed December 10, 2004
8	Revised Notice of Exemption Application, mailed July 25, 2005
9	Subject property record card
10	Three (3) photographs of Petitioner's signage
	A – Sign promoting bingo three days per week, and promoting karaoke
	B – Additional sign promoting bingo

- C – Both signs (in A and B above) shown together
- 11 Sketch of subject building’s room layout
- 12 Computation of room size and percentage of use for each room
- 13 Predominant use worksheet

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

- Board Exhibit A – The Form 132 Petition, filed January 10, 2005
- Board Exhibit B – Notice of Hearing on Petition, dated September 18, 2006
- Board Exhibit C – Hearing sign-in sheet

In addition, the Board incorporates into the record all filings by the parties and orders of the Board, including the Board’s Order of Dismissal, Notice of Intent to Rehear Petition, and Order Regarding Conduct of Exemption Hearing.

9. The subject property consists of a building and personal property situated on 3.99 acres of land. The property is located at 3501 Harris Road, Fort Wayne, in Washington Township, Allen County. The ALJ did not inspect the subject property.

10. For 2004, the PTABOA determined the subject property to be:

- Land: 65% exempt, 35% taxable
- Improvements: 65% exempt, 35% taxable
- Personal Property: 65% exempt, 35% taxable

11. The Petitioner is requesting a 75% exemption for the subject land, improvements, and personal property.<sup>1</sup>

### **JURISDICTIONAL FRAMEWORK**

12. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible personal property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a

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<sup>1</sup> On its Form 132 petition, the Petitioner requested a 100% exemption for the subject property. At the hearing, however, Mr. Zinkiewicz requested that the Board find the subject property to be 75% exempt.

county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

## ANALYSIS

### Parties' Contentions

13. The Petitioner presented the following evidence and argument in support of its position:
  - a) The Petitioner erroneously received a Notice of Action on Exemption Application for American Legion Post #499. *Zinkiewicz testimony*. That notice stated that American Legion Post #499 is 75% exempt from property taxation. *Id.* American Legion Post #499 has a larger building than does the Petitioner, and it is also open to the public. *Id.* In order to be fair, the subject property should receive a 75% exemption. *Zinkiewicz argument*.
  - b) The Petitioner is using more of the property for community services than it previously did. *Zinkiewicz testimony*. The Petitioner previously gave \$80,000 per year to the community; however, the Petitioner lost a major revenue source. The number of banquets is also down. *Id.* The Petitioner now has more events open to the public. *Id.*
  - c) Outside groups use the subject building's dining area for activities such as meetings, receptions, class reunions, and prayer group sessions. *Id; Pet'r Ex. 1*. Other groups occasionally use the dining area free of charge on an as-needed basis. *Id.* The Petitioner provided a list of groups that regularly use its dining room. *Pet'r Ex. 1*. The Petitioner rents out its banquet room to members for \$150 and to non-members for \$200. *Id.; see also, Pet'r Ex. 1*. The Petitioner also donates use of the banquet room to certain groups. *Id.*

14. The Respondent presented the following evidence and argument in support of its position:
- a) The Respondent determined that the subject property was 65% exempt following a visit to the property during the summer of 2005. *Klerner testimony*. Ms. Klerner, the PTABOA's deputy, met with the commander, the maintenance engineer, and other employees of the Petitioner. *Id.*
  - b) During the site visit, the Respondent's employees drew a sketch of the subject property, showing the layout of rooms and the square footage contained in each room. *Id.; Resp't Ex. 11*. Ms. Klerner prepared calculations based on the size of each room and the percentage of time each room was used for an exempt purpose as opposed to being open to the public. *Klerner testimony; Resp't Ex. 12*. Based on Ms. Klerner's calculations, the PTABOA determined that the subject property was entitled to 65% exemption. *Id.*
  - c) Because the Respondent demonstrated that 35% of the subject building was used by the public for receptions, bingo games, and social gatherings as opposed to activities for American Legion Post #82 members, it has shown that the subject property is only entitled to 65% exemption from property taxation. *Rogers argument*.

#### Constitutional and Statutory Basis for Exemption

15. In Indiana, the general rule is that all property in the State is subject to property taxation. *See Ind. Code § 6-1.1-2-1*. Nonetheless, the Indiana Constitution provides that the General Assembly may exempt from property taxation any property being 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 enact legislation granting the exemption.

16. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support – taxation. *Id.* When property is exempted from taxation, the effect is to shift the amount of taxes that parcel would have paid to other parcels that are not exempt. *National Ass’n of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218, 220-21 (Ind. Tax Ct. 1996). The transfer of this obligation to non-exempt properties is not an inconsequential shift. For this reason, an exemption from taxation is strictly construed against the taxpayer. *Id.* (citing *St. Mary’s Medical Center of Evansville, Inc. v. State Bd. of Tax Comm’rs*, 534 N.E.2d 277, 280 (Ind. Tax Ct. 1989)). Thus, the taxpayer must demonstrate that it provides a “present benefit to the general public . . . sufficient to justify the loss of tax revenue.” *Id.* (quoting *St. Mary’s Medical Center*, 534 N.E.2d at 279).

#### The Petitioner’s Claims for Exemption

- A. *The Petitioner’s claim for exemption under Ind. Code § 6-1.1-10-25*
17. Ind. Code § 6-1.1-10-25 provides for the exemption of property owned by certain miscellaneous organizations. One such organization is a post of the American Legion. *See* Ind. Code § 6-1.1-10-25(a)(8). The exemption provided by Ind. Code § 6-1.1-10-25, however, does not apply unless the property is exclusively used, and in the case of real property actually occupied, for the purposes and objectives of the organization. Ind. Code § 6-1.1-10-25(b).
18. In this case, the Petitioner did not explain how the activities conducted at the subject property related to the Petitioner’s purposes and objectives. In fact, the Petitioner did not even identify the purposes and objectives of its organization. The Petitioner did not offer its by-laws or articles of incorporation into evidence, although it did attach copies of those documents to its Form 132 petition. *See Board Ex. A.* Even if the Petitioner had offered those documents into evidence, it did not attempt to relate the activities conducted at the subject property to the objectives stated in its organizational documents. That is

particularly problematic in light of the undisputed evidence that the Petitioner rented out its banquet room and hosted numerous events open to the public. The Petitioner therefore failed to make a prima facie case that the subject property is entitled to an exemption under Ind. Code § 6-1.1-10-25(b). *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E. 2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board....through every element of the analysis”).

*B. The Petitioner’s claim for exemption under Ind. Code § 6-1.1-10-16(a)*

19. The Indiana General Assembly has provided that “[a]ll of part or 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.” Ind. Code § 6-1.1-10-16(a). Similarly, a tract of land is exempt if “a building that is exempt under subsection (a) or (b) is situated on it. . . .” Ind. Code § 6-1.1-10-16(c). Personal property is exempt “if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) [of Ind. Code § 6-1.1-10-16] if it were a building.” Ind. Code § 6-1.1-10-16(e)
20. When interpreting the exemption provided by Ind. Code § 6-1.1-10-16(a), “the term ‘charitable purpose’<sup>2</sup> is to be defined and understood in its broadest, constitutional sense.” *Knox County Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177 (Ind. Tax Ct. 2005)(citing *Indianapolis Elks Bldg. v. State Bd. of Tax Comm’rs*, 145 Ind. App. 522, 251 N.E.2d 673, 682 (1969)). As a result, “[a] charitable purpose will generally be found to exist if: 1) there is ‘evidence of relief of human want . . . manifested by obviously charitable acts different from the everyday purposes and activities of man in general’; and 2) there is an expectation of a benefit that will inure to the public by the accomplishment of such acts.” *Id.* (quoting *Indianapolis Elks*, 251 N.E.2d at 683).

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<sup>2</sup> The Petitioner also checked the box on the Form 132 Petition claiming exemption based upon its use of the subject property for educational purposes. *See Board Ex. A*. At the hearing, the Petitioner presented no argument or evidence that it qualified for exemption from property taxation for educational purposes, or that any educational activities took place at the subject property. Consequently, the Petitioner has waived any claim that it is entitled to an exemption based upon use of the subject property for educational purposes.



21. The test used to determine whether all or a portion of a subject property qualifies for an exemption for charitable purposes is the “predominant use” test, as set forth in Ind. Code § 6-1.1-10-36.3. *State Bd. of Tax Comm’rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Ind. Code § 6-1.1-10-36.3(a) provides, in relevant part: “property is predominantly used or occupied for one (1) or more stated [exempt] 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.” Subsection (c) of that statute further provides:

(3) [p]roperty 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.

Ind. Code § 6-1.1-10-36.3(c)(3).

22. In support of its position, the Petitioner submitted an anecdotal list of organizations that use the subject property. *Pet’r Ex. 1*. Allowing organizations such as the Air Force, a prayer group, and the Fort Wayne Kiwanis<sup>3</sup> to use the subject property may indeed be charitable. Under the predominant use test, however, the taxpayer bears the burden of demonstrating the percentage of time during which the property is devoted to charitable uses versus the total amount of time that the property is in use. It is undisputed that the Petitioner used the subject property for non-charitable purposes, such as renting out its banquet hall to various individuals and groups. The Petitioner, however, did not provide the Board with a breakdown between its charitable and non-charitable use of the subject property that would enable the Board to determine whether the 65% exemption granted by the PTABOA is in error.

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<sup>3</sup> Those are three of the organizations that the Petitioner contends regularly use the subject property. *See Pet’r Ex. A*.

23. Although the Respondent submitted a more detailed breakdown of the Petitioner's use of the subject property, its calculations are largely conclusory, and they do little to aid the Board in determining the extent to which the subject property was devoted to charitable use. The Respondent simply categorizes the Petitioner's use of various rooms as "exempt" or "non-exempt" based largely upon whether a given room hosted activities that were open to the public. *See Klerner testimony; Resp't Exs. 11-13*. The mere fact that members of the public use a facility does not answer the question of whether the facility is being devoted to a charitable use. The determination of whether a given use is charitable instead hinges upon whether there is "evidence of relief of human want . . . manifested by obviously charitable acts different from the everyday purposes and activities of man in general," and whether "there is an expectation of a benefit that will inure to the public by the accomplishment of such acts." *Indianapolis Elks*, 251 N.E.2d at 683. Consequently, some activities open to the public may qualify as charitable, while other activities limited solely to members may be non-charitable. Even if the Board were to take the Respondent's calculations at face value, they support the current level of exemption and therefore do not aid the Petitioner in seeking an exemption of 75%.
24. The Petitioner also submitted financial statements for 2006. *See Pet'r Ex. 2*. The Petitioner's financial condition, however, is largely irrelevant to the question of whether it is entitled to property tax exemption. The Petitioner may have offered those statements in conjunction with its claim that it previously donated substantial sums to charity. Although, in some instances, charitable giving may serve as evidence to support a claim of charitable use, the statutory test is the predominant use of the property, not the distribution of income for charitable purposes. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d at 1263. In addition, the financial statements submitted by the Petitioner do little to establish its level of charitable giving. Even if they did, the Petitioner does not explain how those statements relate to the Petitioner's charitable use of the subject property in 2004, the assessment year under appeal.
25. Finally, the Petitioner contends that it should receive an exemption of 75% because American Legion Post #499 received a 75% exemption for its property. The amount of

exemption given to another property, however, generally is irrelevant to the amount of exemption to which a subject property is entitled. That is particularly true where, as here, the taxpayer has not shown that the two properties were devoted to similar uses during the assessment years in question.

26. For the reasons set forth, the Petitioner has failed to make a prima facie case showing the PTABOA erred in determining that the subject property is 65% exempt.

#### **SUMMARY OF FINAL DETERMINATION**

27. The Petitioner failed to make a prima facie case showing the PTABOA erred in determining that the subject property was entitled to a 65% exemption for 2004. The Board finds for the Respondent.

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

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Commissioner, 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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <[http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html)>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.