

REPRESENTATIVES FOR PETITIONER: John Allyn, Secretary/Treasurer

REPRESENTATIVES FOR RESPONDENT: W. L. McLaughlin, Attorney at Law

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

GOSHEN AMATEUR RADIO CLUB, INC.)	)	Petition No.: 20-012-05-2-8-00001
	)	
Petitioner,	)	Elkhart County
	)	
v.	)	Elkhart Township
	)	
ELKHART COUNTY PROPERTY	)	Assessment Year: 2005
TAX ASSESSMENT BOARD OF	)	
APPEALS,	)	Personal Property
	)	
Respondent.	)	

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

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**December 15, 2006**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**Issue: Does the Petitioner’s personal property qualify for tax exemption under the charitable purposes exemption in Ind. Code § 6-1.1-10-16?**

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Procedural History**

1. John Allyn, Secretary-Treasurer of Goshen Amateur Radio Club, Inc., filed an Application for Property Tax Exemption (Form 136) for personal property for the 2005 assessment on May 3, 2005. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the request for exemption and finding the personal property 100% taxable on June 3, 2005.
2. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Petition for Review of Exemption (Form 132) with the Board seeking an administrative review of the PTABOA determination on June 6, 2005.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4, Patti Kindler, the designated Administrative Law Judge, held an administrative hearing in Goshen on September 26, 2006. She did not conduct an on-site inspection of the property.
4. The following persons were sworn as witnesses at the hearing:
  - John H. Allyn, Secretary/Treasurer for Goshen Amateur Radio Club, Inc.,
  - Stephen O. Arnold, Station Manager,
  - Sanford Swartzendruber, President of Goshen Amateur Radio Club, Inc.,
  - R. Eugene Inbody, County Assessor,
  - Veronica Williams, Deputy County Assessor.
5. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 – Articles and Certificate of Incorporation,
  - Petitioner Exhibit 2 – Not-For-Profit Registration Certificate,

Petitioner Exhibit 3 – Letter from the Internal Revenue Service recognizing Goshen Amateur Radio Club, Inc. as a public charity,  
Petitioner Exhibit 4 – Certificate of Assumed Business Name for Hamfest,  
Petitioner Exhibit 5 – Nonprofit Organization Annual Report for 2004,  
Petitioner Exhibit 6 – Indiana Business Entity Report,  
Petitioner Exhibit 7 – Department of Revenue sales tax due for 2004,  
Petitioner Exhibit 8 – Department of Revenue sales tax due for 2005,  
Petitioner Exhibit 9 – Application for Property Tax Exemption (Form 136),  
Petitioner Exhibit 10 – Form 103 Business Tangible Personal Property return,  
Petitioner Exhibit 11 – Form 104 Business Tangible Personal Property return,  
Petitioner Exhibit 12 – Review of Exemption, Form 132,  
Petitioner Exhibit 13 – Notice of Action on Exemption Application, Form 120,  
Petitioner Exhibit 14 – Copy of Ind. Code § 6-1.1-10-16.

6. The Respondent did not present any exhibits during the administrative hearing.
7. The following additional items are part of the record of proceedings:
  - Board Exhibit A – Form 132 Petition with attachments,
  - Board Exhibit B – Notice of Hearing on Petition,
  - Board Exhibit C – Hearing sign-in sheet,
  - Board Exhibit D – Pre-hearing Exemption Order.
8. The personal property in question is radio equipment housed in the Greencroft Retirement Campus at 1902 South 15<sup>th</sup> Street in Goshen.
9. The Petitioner claims that its personal property qualifies for property tax exemption because it is used for charitable purposes under Ind. Code § 6-1.1-10-16.
10. The Goshen Amateur Radio Club, Inc. (the Club) was established in 1955. The Club has at least 87 registered members in Elkhart County. Most of the Club members are licensed by the FCC to communicate on designated radio frequencies. The Club is

organized under Section 501(c)(3) of the Internal Revenue Code as an educational and charitable organization. It is recognized as a public charity under Sections 509(a)(1) and 170(b)(1)(A)(vi). The Club had the benefit of property tax exemption in the past. *Allyn testimony; Pet'r Ex. 3.*

11. In 1996, the Greencroft Retirement Center entered into an agreement with the Club for the use of one of its rooms to provide severe weather information to the community. The equipment used to provide weather information includes transceivers, test meters, antennas, computers, and printers. Club members loaned or donated it. This equipment represents the assets reported on the Club's business tangible personal property return. The reported value is approximately \$2,150. *Allyn testimony; Pet'r Ex. 10, 11.*
12. The Petitioner uses the personal property located in the Greencroft Retirement Center to operate a severe weather station for the safety and protection of the citizens in Elkhart County. Sky Warn was formed by members of the Club to collect severe weather information that goes undetected by radar and to forward this weather information and the severe weather information received from other amateur radio operators located in 37 counties in the Indiana, Ohio, and Michigan area to the National Weather Service. To further provide community protection, the Petitioner also formed the Amateur Radio Civil Emergency Service to aid in communicating with the Elkhart County Emergency Management Agency and has provided communication assistance during a train derailment, shootings, snow emergencies, and a plant explosion. *Allyn testimony.*
13. The Petitioner also provides community benefits through assisting with communication for the Loveway Fund Ride (a fundraiser for a therapeutic horse-riding academy), communication for the Boy Scouts during their jamboree and for the annual 4-H parade. The Petitioner allows the Boy Scouts to use its equipment to contact other Boy Scouts across the country. The Petitioner donates books and videos to local and high school libraries. It demonstrates amateur radio to high school classes, allowing students to communicate with astronauts in space. *Allyn testimony.*

14. The FCC prohibits Petitioner from receiving payment for its services. The Club members provide equipment and their time at no cost to Elkhart County for the protection of its citizens in an event of an emergency or severe weather. *Swartzendruber testimony.*
15. The PTABOA relies on *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 220 (Ind. Tax Ct. 1996), which states that exemption requires more than an organization being a not-for-profit organization. Miniature Enthusiasts was a similar organization and it was not granted exemption. *McLaughlin argument.*
16. Having federal or state income tax exemption does not automatically grant property tax exemption. The test for determining property tax exemption is the use of the property. Radio clubs have activities that are not necessarily exempt, even though some of the activities may be charitable in nature. Getting together to exchange equipment and have fellowship is not a tax-exempt purpose. *McLaughlin argument.*
17. The PTABOA has no dispute with the evidentiary side of this appeal. The PTABOA's position is purely legal in nature and is based on the information presented at the PTABOA hearing. The only evidence available for the PTABOA's review was a partial Form 132. The PTABOA did not see the evidence presented during the administrative hearing prior to the Board's proceeding. *Williams testimony.*

### **Jurisdiction**

18. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a 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.

## Analysis

19. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case supporting the claim for exemption. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
20. In making its case, the taxpayer must explain how each piece of evidence is relevant. *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”).
21. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
22. According to the general rule in Indiana, all property in this state on the assessment date is subject to property taxation. Ind. Code § 6-1.1-2-1. 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 require pecuniary support in the form of taxation. When property is exempted from taxation, the taxes it would have paid shift to other parcels that are not exempt. *Miniature Enthusiasts*, 671 N.E.2d at 220-221.
23. The General Assembly may exempt from property taxation any property that is 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.

24. The transfer of tax obligations to non-exempt properties is not inconsequential. Therefore, worthwhile activities and noble purpose alone are not enough for tax exemption. A charitable exemption is justified and upheld based on accomplishment of public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
25. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct. 1996) (nonprofit status does not entitle a taxpayer to tax exemption).
26. 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 exemption is claimed. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel Co., Inc. 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).
27. The taxpayer must demonstrate that it provides “a present benefit to the general public...sufficient to justify the loss of tax revenue.” *Miniature Enthusiasts*, 671 N.E.2d at 221 (quoting *St. Mary's Medical Center of Evansville, Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 279 (Ind. Tax Ct. 1989); *Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1014.
28. The test used to determine whether all or a portion of property qualifies for an exemption for charitable purposes is the “predominate use” test. 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).

29. The Indiana General Assembly has provided that personal property is exempt “if it 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). The Petitioner claims that it is entitled to an exemption because its personal property is owned and used for charitable purposes.<sup>1</sup>
30. When interpreting the exemption provided by Ind. Code § 6-1.1-10-16, “the term ‘charitable purpose’ is to be defined and understood in its broadest, constitutional sense.” *Knox Co. Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (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).
31. There is no dispute that the Petitioner uses the equipment to provide communication for the benefit of the community in weather emergencies and other types of emergencies. There is no dispute that the Petitioner uses the equipment to provide communication for Boy Scouts, 4-H activities, and for demonstrations at local schools. The volunteers operate the equipment using an “on call” basis. The Petitioner receives no monetary compensation for the services it provides. This kind of activity is exempt use because it provides protection and safety for the community that clearly constitutes a public benefit and relieves the government of some obligations. *College Corner, L.P. v. Dep’t of Local Gov’t Fin.*, 840 N.E.2d 905 (Ind. Tax Ct. 2006). The fact that the PTABOA was not aware of some of this information when it denied the exemption is irrelevant.

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<sup>1</sup> Although the Petitioner also marked educational purposes on its exemption claim, it did not present evidence or argument regarding educational use. The Petitioner focused on its claim of charitable use. The Board’s review is confined to the charitable claim.



32. The Respondent questioned whether the Petitioner's use of the personal property for the operation of an amateur radio club is an exempt activity because the use is more social than charitable. The Respondent failed, however, to prove any facts to support that position. The Respondent failed to present any evidence to rebut the charitable use. The Respondent presented conclusory statements that the Petitioner uses its personal property for social purposes rather than charitable purposes. Those conclusory statements do not constitute probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
  
33. The Respondent primarily relied on the holding in *Miniature Enthusiasts* that the law requires more than being a not-for-profit organization and that the receipt of federal income tax exemption does not necessarily mean something is entitled to property tax exemption. While that position is a correct statement, the Respondent's position fails to deal with the facts the Petitioner presented that go far beyond not-for-profit status and federal income tax exempt status. The Respondent cited to nothing in the *Miniature Enthusiasts* decision that indicates the Petitioner's community benefit activities do not qualify for charitable exemption.
  
34. The property must be used predominately for an exempt purpose. Ind. Code § 6-1.1-10-36.3. The Petitioner established that its personal property provides a number of public benefits that are charitable uses. The Petitioner did not provide specific evidence regarding the amount of time the property is used for those purposes. Nevertheless, the record contains no probative evidence that the property was used for anything else. The Board concludes that the uses established by the Petitioner are the only uses made of the subject property.

## Summary of Final Determination

35. The Petitioner made a prima facie case for charitable exemption. The Respondent failed to rebut or impeach that case. The Petitioner's personal property is 100% exempt.

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