

REPRESENTATIVES FOR PETITIONER:

Ronald K. Rychener, Mullin, McMillin & Rychener

REPRESENTATIVES FOR RESPONDENT:

Sharon Halcomb, Franklin County Assessor

Bess Edwards, Member, Property Tax Assessment Board of Appeals

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | |
|------------------------------|---|---------------------------------|
| KING’S RANCH, INC., |) | |
| |) | Petitions: 24-012-03-2-8-00001 |
| |) | 24-012-03-2-8-00002 |
| Petitioner, |) | |
| |) | Franklin County |
| v. |) | Salt Creek Township |
| |) | |
| FRANKLIN COUNTY PROPERTY TAX |) | Parcels: 012-11-0055-00 |
| ASSESSMENT BOARD OF APPEALS, |) | 012-11-0054-00 |
| |) | |
| Respondent. |) | Assessment Years: 2003 and 2004 |
| |) | |

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

March 29, 2006

FINAL DETERMINATION

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

Issue 1 – Was the exemption application timely filed for 2003?

Issue 2 – Is the property entitled to exemption under Ind. Code § 6-1.1-10-16 for 2004?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. On October 29, 2003, King's Ranch, Inc. filed an Application For Property Tax Exemption under Ind. Code § 6-1.1-10-16, claiming that the subject property is used for a religious purpose. This application did not indicate the year for which exemption was sought. The Franklin County Property Tax Assessment Board of Appeals (PTABOA) issued its determination about the Petitioner's exemption claim on October 14, 2004. The PTABOA determined that the subject property is 100% taxable. On November 15, 2004, King's Ranch, Inc., filed a Form 132, Petition for Review of Exemption, seeking the Board's administrative review of its exemption claim.

Hearing Facts and Other Matters of Record

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, an administrative hearing was held on August 23, 2005, in Brookville, Indiana, before Brian McKinney, 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.
3. The following persons were sworn as witnesses and presented testimony:
 - Vernon G. King, Trustee, Director, King's Ranch, Inc.,
 - Phyllis C. King, Director, King's Ranch, Inc.,
 - Sharon Halcomb, Franklin County Assessor,
 - Bess Edwards, Member, PTABOA.
4. The following exhibits were presented for the Petitioner:
 - Petitioner's Exhibit 1 – Articles of Incorporation,
 - Petitioner's Exhibit 2 – Bylaws of King's Ranch, Inc.,
 - Petitioner's Exhibit 3 – Letter from Internal Revenue Service recognizing King's Ranch, Inc., is a 501(c)(3) organization,
 - Petitioner's Exhibit 4 – Guest list of King's Ranch, Inc.,

Petitioner's Exhibit 5 – Brochure from King's Ranch, Inc.,
Petitioner's Exhibit 6 – DVD of King's Ranch,
Petitioner's Exhibit 7 – Exemption Application filed on October 29, 2003,
Petitioner's Exhibit 8 – Notice of Action on Exemption Application,
Petitioner's Exhibit 9 – Indiana nonprofit organization's annual report for 2003,
Petitioner's Exhibit 10 – 2003 tax return,
Petitioner's Exhibit 11 – Background information on King's Ranch (document
titled Meet the Kings, Vernon and Phyllis),
Petitioner's Exhibit 12 – Annual report and tax return for 2004.

5. The Respondent did not present any exhibits.
6. The following additional items are officially recognized as part of the record:
 - Board Exhibit A – Form 132 Petitions,
 - Board Exhibit B – Notices of Hearing dated June 30, 2005,
 - Digital recording of the Board's hearing.
7. The Petitioner filed a post hearing brief on September 6, 2005. The Respondent was given until September 14, 2005, to respond, but failed to do so.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. The PTABOA determined both parcels are 100% taxable for 2003 and 2004.

Jurisdictional Framework

10. 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.

Administrative Review and the Petitioner's Burden

11. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case. *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).
12. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *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”).
13. 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.

Basis of Exemption and Burden

14. 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.
15. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemption. 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 Department of Revenue*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct. 1996) (non-profit status does not necessarily entitle a taxpayer to tax exemption).

16. For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.
17. 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. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels. *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996). Therefore, the general rule is that all property in Indiana is subject to property taxation. Ind. Code § 6-1.1-2-1.
18. The transfer of this obligation to non-exempt properties is not an inconsequential shift. Therefore, worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is justified and upheld on the basis of 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)).
19. 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 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).

Discussion and Analysis

Issue 1 – Was the exemption application timely filed for 2003?

20. The Petitioner filed its exemption application on October 29, 2003. *Pet'r Ex. 7, Bd. Ex. A*. The Petitioner contends that Ind. Code § 6-1.1-11-3.5(a) permits filing anytime during the 2003 tax year in order to seek an exemption for 2003. The Petitioner contends that

when it sought the exemption, it had not yet received the tax bill, and would not receive the tax bill for approximately one year after filing the exemption application.

21. The Respondent denied the exemption claim and issued a notice of its action dated October 14, 2004. *Pet'r Ex. 8*. The Respondent contends the exemption application had to be filed by May 15, 2003, to be considered for the 2003 assessment. *Halcomb testimony*. The Respondent considered the application to be for 2004. *Id.*

22. Indiana Code § 6-1.1-11-3(a) provides:

Subject to subsections (e) and (f), an owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the county assessor of the county in which the property that is the subject of the exemption is located. The application must be filed annually on or before May 15 on forms prescribed by the department of local government finance. Except as provided in sections 1, 3.5, and 4 of this chapter, the application applies only for the taxes imposed for the year for which the application is filed.

23. Indiana Code § 6-1.1-11-3.5(a) provides:

A not-for-profit corporation that seeks an exemption provided by IC 6-1.1-10 for 2000 or for a year that follows 2000 by a multiple of two (2) years must file an application for the exemption in that year. However, if a not-for-profit corporation seeks an exemption provided by IC 6-1.1-10 for a year not specified in this subsection and the corporation did not receive the exemption for the preceding year, the corporation must file an application for the exemption in the year for which the exemption is sought. The not-for-profit corporation must file each exemption application in the manner (other than the requirement for filing annually) prescribed in section 3 of this chapter.

24. Ind. Code § 6-1.1-11-3(a) states that an exemption application must be filed annually on or before May 15 in the year an entity is seeking an exemption. Ind. Code § 6-1.1-11-3.5(a) does not affect the due date of the exemption application, but simply allows not-for-profit corporations to file an exemption application in even numbered years, rather than every year. This exception specifically requires each exemption application to be filed in the manner prescribed in section 3.

25. It is a fundamental rule of statutory construction that it is the legislative intent behind a statute, rather than its precise language, which governs. *See Zoercher v. Indiana Associated Tel. Corp.* 7 N.E.2d 282, 284 (Ind. 1937). To accomplish this task, the Board must give statutory words and phrases their plain, ordinary, and usual meaning. It also must read a statute as a whole, and not read sections or parts in a piecemeal fashion. *Roehl Transp., Inc. v. Indiana Dep't of Revenue*, 653 N.E.2d 539, 542 (Ind. Tax Ct. 1995) (citations omitted).
26. Reading Ind. Code § 6-1.1-11-3.5(a) in the manner proposed by Petitioner would nullify clear and specific language in Ind. Code § 6-1.1-11-3(a) requiring an exemption application to be filed by May 15. Instead, this section must mean that a not-for-profit entity that was not exempt the preceding year must file an exemption application in an odd numbered year, if that is the first year they are seeking an exemption. In any case, an exemption application must be submitted on or before May 15 of the year for which the exemption is sought.
27. The Petitioner failed to show the exemption application was timely filed for the 2003 tax year (on or before May 15, 2003). Consequently, the property remains 100% taxable for 2003.

Issue 2 – Is the property entitled to an exemption under Ind. Code § 6-1.1-10-16 for 2004?

28. The most applicable statute governing this issue is Ind. Code § 6-1.1-10-16(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.
29. Testimony and other evidence considered particularly relevant to this determination includes the following:
 - a. The Petitioner acquired the property in June of 1999. The property consists of approximately 147 acres. Mr. and Mrs. King retained approximately two acres for their personal residence. *P. King testimony.*

- b. The first two cabins were completed in 2002. A third cabin was completed in 2004. A fourth cabin was under construction at the time of this hearing in 2005. *Id.*
- c. The property also contains two barns. One barn is used to house horses and the other is for storage of implements, tractors, bush-hogs, and similar equipment. *Id.* Because of liability issues, the Petitioner does not allow the guests to ride the horses. *Id.*
- d. The cabins have two bedrooms with a loft that can serve as an office. The living room and kitchen are combined into a great room with a cathedral ceiling. Each cabin has four beds and sleeps approximately eight people. The cabins have a fully equipped kitchen with a microwave, refrigerator, dishwasher, coffeemaker, and cooking utensils. The cabins do not have a television or a telephone. *Id.*; *Pet'r Exs. 5; 6; 11.*
- e. On their homesite, (which is not subject to this appeal) Mr. and Mrs. King have a swimming pool, hot tub, and fishing pond that they allow guests at King's Ranch to use. *P. King testimony.*
- f. The purpose of King's Ranch is to allow persons in the ministry to get away and "recharge their batteries." *Id.* The Petitioner offered testimony that this use is important because many clergy members are very stressed and are considering leaving the profession. *Id.* Members of the clergy sometimes bring their staff and they do some planning for sermons and church activities. *Id.*
- g. Petitioner's Exhibit 6, a DVD, stated that members of the clergy use their time at King's Ranch to relieve stress and they view the visit as a rewarding time alone with God and their family. *Pet'r Ex. 6.* The DVD ends by stating there is only one demand for guests of King's Ranch — relax and enjoy. *Id.*

- h. The DVD has a slideshow of numerous photographs of the cabins (interior and exterior) and the surrounding property. Many of the statements on the DVD are almost identical to testimony offered at the Board's hearing.
 - i. Ministers are on call all the time, day and night, which causes undo stress on home lives with spouses and children. King's Ranch gives members of the clergy a place to go to get away from the stress and spend quality time with family. *Id.*
 - j. King's Ranch only allows full time practicing ministers, members of the clergy, and missionaries to stay there. The Petitioner turns down anyone else who might want to use or rent the cabins. *Id.* King's Ranch keeps a guest registry. *Petr's Ex. 4.*
 - k. The Petitioner charges \$50.00 per night for a pastor and his family. If a pastor brings his staff, then it is \$75.00 per night. The amount charged is nominal and helps defray Petitioner's costs. In the past, some members of the clergy have stayed without charge if they were unable to pay. *Id.*
 - l. The Petitioner has turned away numerous people (approximately 3-5 per week) including Sunday school teachers and church board members. The Petitioner sometimes has allowed deacons or church elders to stay at King's Ranch. *Id.*
 - m. The Cricket Ridge Golf Course is located a short distance from the subject property. Ministers can play there for free. *Pet'r Ex. 6.* Metamora is located nearby and is a good place to visit and shop. *Id.*
30. In order to qualify for an exemption under Ind. Code § 6-1.1-10-16(a), the Petitioner must show the property is owned, occupied, and used predominantly for exempt purposes. *See* Ind. Code § 6-1.1-10-36.3. Exemption is tied to use of the property, not the status of the owner. *See College Corner v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006); *Sangrlea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997). Indeed, Article X, § 1 of the Indiana Constitution

clearly “contemplates the character and purpose of the property that may be exempted from taxation, not the character and purpose of the owner of the property.” *State ex rel. Tieman v. City of Indianapolis*, 69 Ind. 375, 376 (1879). Therefore, the fact that King's Ranch is a not-for-profit corporation and has been recognized as an exempt 501(c)(3) organization by the Internal Revenue Service does not establish that it qualifies for an Indiana property tax exemption.

31. In the present case, the Petitioner presented evidence that the use of the property is to provide full time members of the clergy a place to get away from the stress of work and everyday life. In doing so, King's Ranch provides time for prayer, relaxation and spending time with family. The guests generally pay \$50.00 per night. If they are unable to pay, the Petitioner has allowed members of the clergy to use the cabins without charge.
32. The property serves as a retreat for members of the clergy, but many activities that occur there are not in and of themselves religious in nature. The evidence establishes King's Ranch is a place where ministers can have rewarding time with family and is a place to relieve stress. It also establishes that the focus is on general relaxation and activities such as fishing, hiking, swimming, shopping, and golf. The Petitioners failed to prove that those are predominantly religious uses. In fact, the evidence establishes that the property is used primarily as a relaxing and secluded spot that is reserved for only members of the clergy and their families. In all probability, any person with a stressful job would benefit from such a vacation spot, but the evidence fails to establish that such activities should reasonably be considered a religious experience.
33. King's Ranch is substantially different from the use in *State Bd. of Tax Comm'rs v. Wright*, 215 N.E.2d 57 (Ind. App. Ct. 1966). In the *Wright* case, the appellate court exempted 104 cabins used by ministers. In that case, a church owned the cabins and used the cabins for an annual retreat where yearly planning occurred furthering the religious activities of the church. No vacationing was permitted in the cabins in the *Wright* case. In the present case, no church owns the cabins.

34. The King's Ranch cabins appear to be used mostly for rest and relaxation. The Petitioner failed to prove that religious use predominates in regard to the cabins or the entire property. *See State Bd. of Tax Comm'rs v. Ft. Wayne Sports Club, Inc.*, 258 N.E.2d 874, 882 (Ind. App. Ct. 1970) (holding record insufficient to establish educational purpose where athletic activities were dominant purpose of property).
35. At times members of the clergy brought staff along and they planned church-related activities. This fact may be similar to the *Wright* case, however, in the *Wright* case that was the predominant use of those cabins. In the present case, there is no evidence regarding how often such use might take place.
36. A taxpayer must present more than anecdotal type information to prove that property is entitled to an exemption. The statutory focal point of predominant use is fairly straightforward. The onus is on taxpayers to produce detailed facility usage reports with supporting documentation of exempt use. *State Bd. of Tax Comm'rs v. New Castle Lodge*, 765 N.E.2d 1257, 1264 (Ind. 2002). In this case, King's Ranch has not provided that kind of documentation for either the cabins or the 147-acre property as a whole. Although the Petitioner offered testimony about a number of apparently religious activities that occur such as prayer, reading the Bible, and preparing sermons, there was no breakdown of the time spent on those religious activities and the time spent on other non-religious activities at the ranch. Without that kind of evidence, it is impossible for the Board to determine predominant use or grant any exemption.
37. For all the above reasons, the Petitioner failed to prove the subject property is owned, used, and occupied for a religious purpose. Thus, the Respondent's burden to support its determination with substantial evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). The Board finds for the Respondent.

Summary of Final Determination

38. The Petitioner filed its application for exemption in October of 2003, well past the May 15, 2003, deadline for that year. Consequently, no exemption can be allowed for the 2003 assessment.
39. The Petitioner failed to establish that the subject property is owned, used, and occupied for predominantly exempt purposes. Therefore, the property remains 100% taxable for the 2004 assessment.

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

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. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.