

REPRESENTATIVE FOR PETITIONER:
Craig Carter, President

REPRESENTATIVE FOR RESPONDENT:
Ann Harrigan, Howard County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

BETA NU CHAPTER- PHI DELTA KAPPA	)	Petition No.:	34-002-04-2-8-00001
	)	Parcel No.:	34-10-05-377-008.000-002
Petitioner,	)		& Personal Property
)		
v.	)	County:	Howard
	)	Township:	Center
HOWARD COUNTY)		
PROPERTY TAX ASSESSMENT)		
BOARD OF APPEALS,	)	Assessment Year:	2004
)		
Respondent.)		

Appeal from the Final Determination of
Howard Property Tax Assessment Board of Appeals

October 30, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The issue presented for consideration by the Board is whether the subject property qualifies for a charitable use exemption under Ind. Code § 6-1.1-10-16.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Joseph Geeslin, Jr.¹, on behalf of Beta NU Chapter of PHI Delta Kappa (Petitioner) filed a Form 132 Petition for Review of Exemption on December 30, 2004, petitioning the Board to conduct an administrative review of the denial of its application for exemption. The determination of the Howard County Property Tax Assessment Board of Appeals (PTABOA) was issued on December 2, 2004.

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 held on August 9, 2006, in Kokomo, Indiana before Dalene McMillen, 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.
4. Persons were sworn in and present at the hearing:

For the Petitioner:

Craig Carter, President, Beta NU Chapter
Michael K. Leazenby, Past President, Beta NU Chapter
Bruce Smith, Secretary/Treasurer, Beta NU Chapter
James Myers, Past National President, Beta NU Chapter
Jon R. Handy, Past President, Beta NU Chapter

For the Respondent:

Ann Harrigan, Howard County Assessor

¹ On July 13, 2006, Mr. Geeslin sent a letter to Dalene McMillen removing himself as representative for the Petitioner. See Board Exhibit E.

5. Though the parties failed to exchange witness and exhibit lists fifteen days prior to the hearing and failed to exchange documentary evidence and summaries of witness testimonies five days prior to the hearing as required under 52 IAC 2-7-1(b), the parties agreed to waive discovery and proceed with the hearing.

6. The Petitioner submitted the following exhibits:
 - Petitioner Exhibit 1 – *College Corner, LP, v. Department of Local Government Finance*, 840 N.E.2d 905 (Ind. Tax Ct. 2006),
 - Petitioner Exhibit 2 – *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257 (Ind. 2002)
 - Petitioner Exhibit 3 – *Plainfield Elks Lodge #2186 v. State Board of Tax Commissioners*, 733 N.E.2d 32 (Ind. Tax Ct. 2000),
 - Petitioner Exhibit 4 – Application for Property Tax Exemption – Form 136,
 - Petitioner Exhibit 5 – Determination by County Property Tax Assessment Board of Appeals – Form 120, page 2,
 - Petitioner Exhibit 6 – Beta Nu Chapter’s Certificate of Incorporation, dated April 28, 1949,
 - Petitioner Exhibit 7 – Petitioner’s facility usage description,
 - Petitioner Exhibit 8 – Petitioner’s total facility usage by category,
 - Petitioner Exhibit 9 – Petitioner’s charitable event usage,
 - Petitioner Exhibit 10 – Petitioner’s non-charitable event usage,
 - Petitioner Exhibit 11 – Petitioner’s distribution of charitable donations,
 - Petitioner Exhibit 12 – Description of Taekwondo program,
 - Petitioner Exhibit 13 – 2003 Return of Organization Exempt from Income Tax – Form 990-EZ,
 - Petitioner Exhibit 14 – EquiVenture newsletter entitled “Saddle Up”.

7. The Respondent did not submit any exhibits for review.

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

Board Exhibit A – Form 132 petition with attachments,

Board Exhibit B – Notice of Hearing on Petition,

Board Exhibit C – Order Regarding Conduct of Exemption Hearing,

Board Exhibit D – Hearing sign-in sheet.

Board Exhibit E – Mr. Joseph Geeslin, Jr.'s withdrawal of representation

9. The property under review consists of a 4,312 square foot general office building, .60 acres of land, and personal property, located at 2401 Saratoga Avenue, Kokomo, Center Township, in Howard County.
10. The ALJ did not conduct an on-site visit of the property.
11. For 2004, the PTABOA determined the land, improvements, and personal property to be 0% exempt and 100% taxable.
12. For 2004, the Petitioner requested a 100% exemption for the subject land, improvements, and personal property under Ind. Code § 6-1.1-10-16.

Jurisdictional Framework

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) 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. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

Basis of Exemption and Burden

1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.

2. 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 in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).

3. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).

4. 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 statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Discussion of Issue

Whether the subject property qualifies for a charitable use exemption under Ind. Code § 6-1.1-10-16.

21. The Petitioner contends that the land, improvements and personal property at issue should be 100% exempt from property taxation under Ind. Code § 6-1.1-10-16, because the activities conducted directly or indirectly on the premises are done in order to promote charity within the community. *Carter testimony*. In support of this contention, the Petitioner testified that Beta Nu Chapter's Certificate of Incorporation states that the purpose of the organization is "to unite fraternally and for mutual benefit to improve themselves and willingness to help others." *Carter testimony; Petitioner Exhibit 6*. According to Mr. Carter, that tradition has continued and grown over the years. *Carter testimony*. In further support, the Petitioner provided a breakdown of the relative amounts of time that the subject property was used for activities that the Petitioner alleged were "charitable" and the activities that the Petitioner acknowledged were "non-charitable" uses. *Carter testimony; Petitioner Exhibits 8 – 10*.

22. The Petitioner contends that the facility's "predominant use" is charitable. *Carter testimony*. According to the Petitioner, the property is used for 40 hours a year for the "We Care" charity. *Id.; Petitioner Exhibit 9*. Mr. Carter testified that in 2003, \$10,543 was raised and donated to "We Care" from this fundraiser. *Id.* The facility also holds an event for Relay for Life and two events for EquiVenture that use the building for a total of 30 hours a year. *Id.* In addition, the Petitioner holds a monthly Blues Jam that is open to the public and takes donations for EquiVenture. *Id.* The Petitioner estimates that the facility is used 80 hours a year for its Blues Jam events. *Id.* Further, the Petitioner uses the property to award scholarships and teach Tae Kwon Do and Karate to the general public. *Id.* According to the Petitioner, the property is used a total of 758 hours for these activities. *Id.* Finally, the Petitioner contends that the two general work days performing facility maintenance accounts for 16 hours and office work in support of its charitable events requires an additional hour. *Id.* Thus, the Petitioner contends that 925 out of the

1,138 hours that the facility is used, the facility is used for exempt charitable activities.² *Carter testimony; Petitioner Exhibit 8. Id.* Therefore, the Petitioner argues, the property is entitled to an exemption because it is used 81% of the time for charitable purposes. *Id.*

24. The Respondent contends the Petitioner's By-Laws state the principle use of the subject property is fraternal in nature. *Harrigan testimony.* According to the Respondent, nowhere in the Petitioner's By-Laws does it state that the property is used for charitable purposes. *Id.* Ms. Harrigan, however, testified that the Respondent had little information upon which to base their determination. *Id.* According to Ms. Harrigan, the Respondent does not "refute any of the preparation work" the Petitioner had done and "will leave it to the State to interpret" all of the information.³ *Id.*

Analysis of the Issue

26. The Petitioner contends that it is entitled to an exemption because the subject property is owned, occupied, and used for charitable purposes. The Indiana General Assembly has provided that "[a]ll 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." 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).

² The Petitioner also detailed the non-charitable events such as meetings, member socials, outside rentals, Monte Carlo nights, and member sporting events for which the facility is used. *Carter testimony.* According to the Petitioner, these non-exempt activities used the facility for a total of 213 hours out of the 1,138 hours the facility was in use. *Id.; Petitioner Exhibit 9.*

³ We are somewhat troubled by this contention. If the Respondent does not dispute that the Petitioner is entitled to an exemption upon reviewing the evidence presented at hearing, the Respondent should agree and stipulate to that outcome. If the Respondent does not agree that the Petitioner is entitled to the exemption, the Respondent must defend its decision denying the exemption. Here the Respondent did neither, leaving the Board with no evidence to weigh on their behalf.

27. When interpreting the exemption provided by Ind. Code § 6-1.1-10-16(a), “the term ‘charitable purpose’ is to be defined and understood in its broadest constitutional sense.” *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005)(citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 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).
28. 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. *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) states that “property is predominantly 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.” Ind. Code § 6-1.1-10-36.3(c) further provides that “[p]roperty 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).
29. Charitable giving may serve as evidence to support a claim of charitable use. The statutory test, however, 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. Moreover, “[t]he declaration of charity by an organization does not necessarily mean that the dominant use of the organization’s property is of the form of charity which the law recognizes as entitling an organization to tax exemption.” *Sahara Grotto v. State Board of Tax Commissioners*, 261 N.E.2d 873, 878 (1970). In order to qualify for an exemption, the owner must submit probative evidence that the property is owned for an exempt purpose, used for an exempt purpose, and occupied for an exempt purpose. Once these three elements are met, the property can be exempt from taxation. *Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005).

30. Here, the Petitioner presented evidence that 81% of its time is spent on activities that it contends are charitable in nature. According to the Petitioner, the property is used for the “We Care” charity; Relay for Life; and EquiVenture for a total of 70 hours a year. *Carter testimony; Petitioner Exhibit 9*. In addition, the facility is used 80 hours a year for a monthly Blues Jam that is open to the public and takes donations for EquiVenture. *Id.* The Petitioner also uses the property to award scholarships and teach Tae Kwon Do and Karate to the general public for a total of 758 hours. *Id.* Finally, two general work days performing facility maintenance and office work in support of its charitable events requires an additional 17 hours. *Id.* Thus, the Petitioner contends that 925 out of the 1,138 hours that the facility is used, the facility is used for exempt charitable activities. *Carter testimony; Petitioner Exhibit 8. Id.* On the basis of its evidence, the Petitioner has raised a prima facie case that the property is used 81% of the time for charitable purposes and is, therefore, entitled to an 81% exemption.
31. Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent testified that it did not “refute” any of the Petitioner’s evidence. The Respondent merely alleged that the property was “fraternal” nature and that it was used mostly for a monthly band event. Further the Respondent contends that scholarships are not charitable donations. The Respondent’s contentions, however, were unsupported by any evidence. Statements that are

unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

32. Even without the “Blues Jam” and the scholarship activities that the Respondent alleges are not “charitable,” the property would still be “predominantly used” for charitable purposes based on the Petitioner’s evidence. The undisputed evidence shows that the facility is used 750 hours for teaching Tae Kwon Do and karate. The Respondent raised no issue with the “charitable” nature of those activities. While we are not convinced that “not turning away” any member of the community for such classes is sufficient to be a charitable activity, the Respondent failed to argue to the contrary. The Tax Court in *Plainfield Elks Lodge No. 2186 v. State Bd. of Tax Comm'rs*, 733 N.E.2d 32 (Ind. Tax Ct. 2000) found that the Lodge’s operation of a golf course and swimming pool met the “predominant use” test where the high school golf team was given unlimited free play and the swimming pool was open to public recreation for a small fee. Thus, the Petitioner’s case meets the minimum showing for raising a prima facie case and the Respondent has failed to rebut or impeach the Petitioner’s prima facie showing.

Summary of Final Determination

30. The Petitioner established a prima facie case showing that the land, improvements and personal property qualified for exemption status. The Respondent failed to rebut this evidence. The Board, therefore, finds in favor of the Petitioner and holds that the subject property is 81% exempt as of March 1, 2004.

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

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