

REPRESENTATIVES FOR PETITIONER:

William W. Barrett, Attorney, Williams, Hewitt, Barrett & Wilkowski, LLP
Daniel J. Layden, Attorney, Williams, Hewitt, Barrett & Wilkowski, LLP

REPRESENTATIVES FOR RESPONDENT:

Brian L. Oaks, Attorney, Howard County

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

AMERICAN LEGION	)	Petition No.:	34-002-04-2-8-00002
POST #6)		
	)	Parcel:	34-10-07-100-017.000-002
Petitioner,	)		& Personal Property
)		
v.	)	County:	Howard
	)	Township:	Center
HOWARD COUNTY)		
PROPERTY TAX ASSESSMENT)		
BOARD OF APPEALS,	)	Assessment Year:	March 1, 2004
)		
Respondent.)		

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

September 13, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (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 issue presented for consideration by the Board is whether a public golf course owned and operated by the Petitioner qualifies for an exemption under Indiana Code § 6-1.1-10-25.¹

Procedural History

2. Pursuant to Indiana Code § 6-1.1-11-7, the Petitioner, American Legion Post #6 (Petitioner) filed a Form 132 Petition for Review of Exemption (Form 132 Petition), petitioning the Board to conduct an administrative review of the partial denial of the Petitioner's application for exemption. The Howard County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on December 10, 2004. The Petitioner filed its Form 132 Petition on January 7, 2005.

Hearing Facts and Other Matters of Record

3. Pursuant to Indiana Code § 6-1.1-15-4, Terry G. Duga, Commissioner, and Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on May 1, 2007, in Kokomo, Indiana.
4. The following persons were sworn as witnesses at the hearing:

¹ The Petition for Review indicates that the Petitioner sought to appeal both the real property and the personal property relating to its golf course ownership. At the Board hearing, Respondent's counsel argued that the county's records indicated the personal property at issue was 100% tax exempt for the assessment year of March 1, 2004. *Oaks testimony*. After a brief discussion, the parties agreed to withdraw the issue of the Petitioner's personal property for 2004.

For the Petitioner:

David L. Pettay, board member, American Legion
Denny Arnett, finance officer, American Legion
Jan Jenkins, trustee, American Legion
Michael C. Comerford, commander, American Legion
Matthew Sale, CPA
Kevin D. Chestnut, Deloitte Tax LLP

For the Respondent:

Jamie L. Shepherd, Howard County Assessor
Marilyn Beroshok, PTABOA member
Ann Harrigan, former Howard County Assessor
Sheila Louks Pullen, Center Township Assessor

5. The Petitioner submitted the following exhibits:

- Petitioner Exhibit 1 – Application for Property Tax Exemption – Form 136, dated May 6, 2004,
- Petitioner Exhibit 2 – Notice of Action on Exemption Application – Form 120, dated December 10, 2004,
- Petitioner Exhibit 3 – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132, dated January 7, 2005,
- Petitioner Exhibit 4 – Constitution of the American Legion,
- Petitioner Exhibit 5 – American Legion Officer’s Guide, dated January 2005,
- Petitioner Exhibit 6 – Newspaper article entitled “Legion disputes golf course tax assessment” posted by the Kokomo Tribune, dated February 28, 2006,
- Petitioner Exhibit 7 – Newspaper article entitled “Property tax dispute with Legion continues” posted by the Kokomo Tribune, dated September 26, 2006,
- Petitioner Exhibit 8 – A plat map of the subject property,
- Petitioner Exhibit 9 – Warranty deed from City of Kokomo to American Legion Post #6 for 77 acres, dated November 27, 1944,
- Petitioner Exhibit 10 – Warranty deed from City of Kokomo to American Legion Post #6 for 40 acres, dated October 30, 1957,

- Petitioner Exhibit 11 – Constitution and By-Laws of James DeArmond Golliday Post #6 the American Legion, dated October 2, 1990,
- Petitioner Exhibit 12 – American Legion golf course tournament and event schedule for 2007, Mountain Dew junior tour for 2007 and American Legion event calendars from April 2006 through May 2007,
- Petitioner Exhibit 13 – 26 U.S.C.A. § 501,
- Petitioner Exhibit 14 – American Legion’s income statements for 2003, 2004, 2005 and 2006,
- Petitioner Exhibit 15 – American Legion’s general ledger transactions for 2003, 2004, 2005 and 2006,
- Petitioner Exhibit 16 – American Legion’s Golf Pro Budget vs. Actual for 2003, 2004, 2005 and 2006, and golf course expenses for 2003, 2004, 2005 and 2006,
- Petitioner Exhibit 17 – American Legion’s statement of cash flow for 2003, 2004, 2005 and 2006,
- Petitioner Exhibit 18 – American Legion’s balance sheet for 2003, 2004, 2005 and 2006,
- Petitioner Exhibit 19 – Subject property’s real property tax statements for 2004 payable 2005.

6. The Respondent submitted the following exhibits:

- Respondent Exhibit 1 – Application for Property Tax Exemption – Form 136, dated May 10, 2004,
- Respondent Exhibit 2 – Return of Organization Exempt from Income Tax – Form 990 for 2003 and Exempt Organization Business Income Tax Return – Form 990-T,
- Respondent Exhibit 3 – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132,
- Respondent Exhibit 4 – Notice of Action on Exemption Application – Form 120,
- Respondent Exhibit 5 – A copy of Indiana Code § 6-1.1-10-25,
- Respondent Exhibit 6 – A copy of Indiana Code § 6-1.1-10-16,
- Respondent Exhibit 7 – A copy of Indiana Code § 6-1.1-10-36.3,
- Respondent Exhibit 8 – A copy of *Plainfield Elks Lodge No. 2186 v. State Board of Tax Commissioners*, 733 N.E.2d 32 (Ind. Tax Ct. 2000),
- Respondent Exhibit 9 – A copy of the Board’s final determination in *American Legion Post #82 v. Allen County Property Tax Assessment Board of Appeals*, Petition No. 02-073-04-2-8-00022a, issued January 17, 2007,

Respondent Exhibit 10 – Internet advertisements for the Kokomo American Legion Golf Course, dated July 18, 2006, Chippendale Golf Course, dated April 23, 2007, and Wildcat Creek Golf Course, dated April 23, 2007,

Respondent Exhibit 11 – Subject property’s Real Property Maintenance Report and property record card.

7. 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.

8. The Board requested the parties submit post-hearing briefs by June 18, 2007. The parties both submitted proposed findings of fact and conclusions of law on June 18, 2007.
9. The property at issue is an 18-hole golf course on 118.89 acres, as well as a 9735 square foot dining/retail/storage building and additional two storage buildings, located at 2604 South LaFountain Street, Kokomo, in Center Township, Howard County owned and operated by the American Legion.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2004, the PTABOA determined the land was 52.51% exempt and 47.49% taxable and the improvements 20.90% exempt and 79.10% taxable.²
12. For 2004, the Petitioner contends that the subject property should be 100% tax-exempt.

² The focus of this appeal is the 47.49% of the land and 79.10% of the improvements which the parties agree is an 18-hole golf course open to the public.

Jurisdictional Framework

13. 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. *See* Ind. Code § 6-1.5-4-1 (b); Ind. Code § 6-1.1-15-4.

Administrative Review and Petitioner's Burden

14. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. 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 Township 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”).
16. 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

17. The general rule is that all property 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 from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.

18. 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).

19. 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 at 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)).

20. 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).

Petitioner's Contentions

21. The subject property is owned by the American Legion. *Barrett argument*. The American Legion was established by veterans of World War I in 1919 and chartered by Congress of the United States the same year. *Petitioner Exhibits 4 & 5; Comerford testimony*. The American Legion is exempt as a federal organization under 26 U.S.C. 501(c)(19). *Petitioner Exhibit 13*.

22. The American Legion's Constitution states that "For God and Country, we associate ourselves together for the following purposes: to maintain law and order; to foster and perpetuate a one hundred percent Americanism; to preserve the memories and incidents of our associations in the Great Wars; to inculcate a sense of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses; to right the master of might; to promote peace and good will on earth; to our comradeship by our devotion to mutual helpfulness." *Petitioner Exhibit 4; Comerford testimony*. The Petitioner further submitted its "Blueprint" for the 21st Century which states that its plan to "provide 'Service' to our veterans, their families and their communities is as solid today, in a period of high technology and lightning fast changes, as it was in 1919, when the founding fathers of the American Legion met in Paris." *Petitioner Exhibit 5; Comerford testimony*. According to Mr. Comerford, the American Legion's objective is to provide service to veterans, veterans' families, and to the veterans' community, state and nation. *Comerford testimony*.

23. The part of the property at issue is an 18-hole golf course maintained and operated by the American Legion for public use. *Barrett & Layden argument*. According to the Petitioner, in 1944 and 1957, the City of Kokomo transferred the golf course to the American Legion by warranty deeds. *Petitioner Exhibits 9 & 10; Comerford testimony; Barrett argument*. The post commander, Mr. Comerford, testified that the warranty deeds restrict the use of the property to a public golf

course. *Comerford testimony*. If the American Legion fails to operate the subject property as a public golf course, the property reverts back to the City of Kokomo. *Comerford testimony*.

24. The Petitioner's witness, Mr. Jenkins, an American Legion trustee, testified that in 2004 the golf course had 418 members. *Jenkins testimony*. 290 of those members, or 69%, were members of the American Legion. *Id.* Of the remaining 128 memberships approximately 30 memberships were donated to the City of Kokomo. *Id.* Mr. Jenkins testified that the American Legion charges very economical rates for a round of golf. *Jenkins testimony*. The green fees were \$16 and cart rental \$8, for a total of \$24 in 2004. *Id.* According to Mr. Jenkins, this allows everyone in the area an affordable price for a round of golf. *Id.* Mr. Jenkins testified that approximately 30 to 40 thousand rounds of golf are played on the course each year. *Id.* Thus, the golf course generates a high volume of players which in turn generates revenue for the various programs of the American Legion. *Id.* Further, it allows the American Legion to recruit members for the post. *Id.*
25. The Petitioner contends that the golf course at issue is exempt from property taxation under Ind. Code § 6-1.1-10-25 because the activities conducted directly or indirectly on the premises are done in order to promote the purposes and objectives of the American Legion. *Barrett & Layden argument*. Mr. Comerford testified that he was aware of no other American Legion post that owns or operates a golf course. *Comerford testimony*. He argues, however, that the golf course is an integral part of the Petitioner's property because the proceeds from the golf course are used to provide services to veterans, their families, and their community, state and nation. *Id.*
26. The Petitioner's witnesses testified that the proceeds generated from the golf course allow the American Legion to further their service to veterans and the

community by contributing to numerous charities and educational programs, such as American Legion's birthday dinner, Memorial Day, Veteran's Day and Christmas Eve Dinners, Hoosier Boys State, Law, Fireman and EMS of the Year awards, Fallen Hero Ceremony, Flag Education Program, Howard County Veterans Memorial, Kokomo Military Rites for Veterans of Foreign Wars, donations to needy families at Christmas, American Cancer Society and American Legion youth baseball team. *Petitioner Exhibit 15; Comerford, Arnett & Jenkins testimony.* According to Mr. Comerford, without the golf course, it would not be physically or financially possible to support a quarter of the community service programs that the Petitioner presently provides. *Comerford testimony.*

27. One of the Petitioner's board members, Mr. Pettay, testified that the American Legion also donates the golf course to some of the area varsity, junior varsity and junior high schools' boys and girls' golf teams for practice and competition. *Pettay testimony.* Mr. Pettay testified in 2004 the American Legion donated approximately \$16,700 in rounds of golf to the area schools. *Id.* In addition, the American Legion conducts three youth golf tournaments per year, the Little Pepsi, Mountain Dew Junior Tour, and Howard County Junior Tournament. *Petitioner Exhibit 12; Jenkins testimony.* Approximately 300 youths participate in these tournaments. *Id.*

28. The Petitioner's finance officer, Mr. Arnett, testified that the post has six primary sources of revenue: gaming, kitchen, room rental, dues, bar and golf. *Petitioner Exhibit 14; Arnett testimony.* The Petitioner's total revenue for 2004 was \$837,412.57 of which \$525,432.45 or 62% was golf related items such as green fees, cart rental and golf memberships. *Id.* The expenses associated with the running of the golf course were \$468,934.86. *Petitioner Exhibit 16, pg.4; Arnett testimony.* This left the Petitioner with a net income from golfing of \$56,497.59. *Arnett testimony.*

29. In 2004, the Petitioner made \$56,080.71 in charitable contributions. *Arnett testimony*. According to Mr. Arnett, this included direct donations to charitable organizations of \$12,300, American Legion sponsored events of \$27,080.71, and free use of the golf course of \$16,700. *Id.* Mr. Jenkins testified that, without the golf course, the Petitioner would not have the capital to be able to make such donations. *Jenkins testimony*.
30. Finally, the Petitioner argues, the subject property has always been granted a 100% tax exemption in the years prior to March 1, 2004. *Arnett testimony*; *Barrett argument*.

Respondent's Contentions

31. The Respondent contends that the statute under which the Petitioner claims an exemption limits the exempt property to property "exclusively used, and in the case of real property actually occupied, for the purposes and objectives of the organization." *Respondent's Proposed Findings of Fact and Conclusions of Law (Respondent's Brief)*; *Oaks argument*. The Respondent contends that the Petitioner's witnesses testified that the golf course is not exclusively used nor occupied for the charitable purposes and objectives of the Legion as required by Ind. Code § 6-1.1-10-25(b). *Id.*
32. The Respondent further contends that the American Legion would not qualify for an exemption under Ind. Code § 6-1.1-10-36.3, in which a property must be predominately used or occupied for an exempt purpose. *Respondent's Brief*; *Oaks argument*. The Respondent contends that when the American Legion's monetary and time contributions are reviewed, the predominant use of the real estate is not charitable. *Id.*

33. Finally, the Respondent argues that providing an exemption to the golf course simply because it is owned by an American Legion post is not fair and equitable. *Oaks argument*. While the Petitioner may hold events there, the Respondent contends, most other golf courses do the same. *Id.* To exempt the Petitioner's golf course provides a competitive advantage to the course because it is not paying its fair share to the government. *Id.* According to the Respondent, the golf course is an attractive nuisance that brings persons to the real estate that golf, drink alcohol and gamble and only a small portion of the Petitioner's revenue from those activities is used for charitable purposes. *Respondent's Brief; Oaks argument*.

Analysis of the Issue

34. The Petitioner contends that the subject property is entitled to 100% exemption. *Barrett & Layden argument*. According to the Petitioner, the golf course is an integral part of the American Legion, because the proceeds for the use of the property are used to provide services to veteran, their families, the community, state and nation. *Comerford testimony*. The Petitioner alleges this meets the standards for exemption under Ind. Code § 6-1.1-10-25. *Barrett & Layden argument*. The Respondent argues that the property is a public golf course and, therefore, is not "exclusively used" for purposes of the American Legion. *Oaks argument*.
35. Ind. Code § 6-1.1-10-25 states in relevant part that tangible property is exempt from property taxation if it is owned by a post of the American Legion. *See* Ind. Code § 6-1.1-10-25 (a)(8). The exemption 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). The question, therefore, is whether a public golf course owned by an American Legion

post whose use and proceeds from that use supports American Legion programs can be “exclusively used” for “the purposes and objectives of the organization.”

36. The Respondent contends that because the golf course is open to the public it is not “exclusively used” for the Petitioner’s purposes. We are not persuaded that the fact alone is sufficient to bar the property from exemption. Taken to its extreme, such a narrow interpretation could result in taxing all American Legion property because the public may use the facility for various events throughout the year. *See Plainfield Elks Lodge No. 2186 v. State Board of Tax Commissioners*, 733 N.E.2d 32, 34 (Ind. Tax Ct. 2000)(While exemption statutes are to be strictly construed against the taxpayer, “these provisions are not to be construed so narrowly that the legislature’s purpose in enacting them is defeated or frustrated.”). Ind. Code § 6-1.1-10-25 (b), does not require the property to be exclusively used and actually occupied by the members American Legion. It only requires that the property be used and occupied “for the purposes and objectives of the American Legion.” *Ind. Code § 6-1.1-10-25(b)*.
37. Here, the Petitioner’s witnesses testified that the purpose of the American Legion is to provide service to veterans, their families and their community, state and nation. The Petitioner argues that use of the golf course and proceeds from the golf course furthers those purposes. While we failed to locate any Indiana case on point, we are guided by analogous decisions. First, in *State Board of Tax Commissioners v. Indianapolis Lodge #17, Loyal Order of Moose, Inc.*, 200 N.E.2d 221 (Ind. 1964), the Indiana Supreme Court determined that a dining room open to the public was “used exclusively” for the purposes and in the operation of the petitioner in that case although the dining room was utilized in a manner to produce some return and thereby reduce expenses. 200 N.E.2d at 225. In the *Indianapolis Lodge #17* case, the Indiana Supreme Court cited to several decisions, including *Maryland State Fair v. Supervisor*, 172 A.2d 574 (Md. 1961), wherein a horse track and midway were determined to be exempt because

the fair was financed “by net income realized from the horseracing, midway and admission charges” and “the use of the racetrack and midway grounds was reasonably necessary for the educational work of the society.” More recently, the Indiana Tax Court in *Plainfield Elks Lodge No. 2186 v. State Board of Tax Commissioners*, 733 N.E.2d 32 (Ind. Tax Ct. 2000) found that a golf course was predominantly used for “charitable purposes” because the course was the main source of revenue for the Elks and that the “proceeds from the golf course were placed in the Elks’ general fund, from which money was subsequently donated to various charitable causes in the community.” 733 N.E. 2d at 35. The Tax Court remanded the case to determine the percentage of exemption that should be applied to the facility. *Id.* at 36.

38. Whether an American Legion owned and operated public golf course is exempt is not an easy case. We do, however, believe that the Petitioner has presented sufficient evidence that the course’s exclusive use is to further the “purposes and objectives of the American Legion.” The Petitioner’s witnesses testified that the proceeds generated from the golf course allow the American Legion to serve veterans and their community by contributing to numerous charities and educational programs, such as American Legion’s birthday dinner, Memorial Day, Veteran’s Day and Christmas Eve Dinners, Hoosier Boys State, Law, Fireman and EMS of the Year awards, Fallen Hero Ceremony, Flag Education Program, Howard County Veterans Memorial, Kokomo Military Rites for Veterans of Foreign Wars, donations to needy families at Christmas, American Cancer Society and American Legion youth baseball team. Further, the American Legion has shown that by allowing the community the opportunity to engage in the recreational activity of golfing at an affordable rate, they are fulfilling their obligation to the City of Kokomo to maintain and operate a public golf course for the good of the community.

39. There is no question that if the City maintained ownership and operation of the public golf course, the property would be exempt. *See* Ind. Code §6-1.1-10-5(b)(2). Similarly, there is little question that if the American Legion owned the golf course for the use of only its own members, the course would be exempt under Ind. Code § 6-1.1-10-25. We believe that a finding that, because the American Legion owns the golf course and fulfils its obligations to the City to operate the course as a public golf course, that the course is no longer exempt reads the phrase “exclusively used” too narrowly. To the contrary, we find that owning and operating the public golf course in the City’s stead furthers the American Legion’s purposes of promoting the community. In addition, using proceeds from its operation of the golf course to support programs it would otherwise not be able to afford furthers the American Legion’s purposes of supporting veterans, their families and the veterans’ community, state and nation. The Petitioner has, therefore, established a prima facie case that the subject property is entitled to a 100% exemption.
40. 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). Here, the Respondent argues that the Petitioner is not entitled to an exemption because the American Legion golf course is open to the public and the Petitioner has not complied with the provisions of Ind. Code § 6-1.1-10-25(b). The Respondent’s allegations, however, are contrary to the evidence. The Respondent presented no evidence to demonstrate the Petitioner is not using and occupying the real property for the purposes and objectives of the organization or is acting contrary to its charter or bylaws.
41. The Respondent further contends that, while the Petitioner is a charitable organization, the Board should focus on the predominant use of the property as set forth in Ind. Code § 6-1.1-10-36.3. The Respondent argues that the real estate is

essentially an attractive nuisance, in that the golf course brings persons to the real estate to golf, drink alcohol and gamble and is not the type of activity that relieves human want or amounts to an obviously charitable act different from the everyday purposes and activities of man in general. *Respondent's Brief*; see also *Grandview Care, Inc.* 826 N.E.2d at 182.

42. The Respondent is correct that the predominant use test requires one to focus on the use of the facility rather than upon whether the income from that use is distributed for charitable purposes, although charitable giving may serve as evidence to support a claim of charitable use. *New Castle Lodge #147, Loyal Order of Moose, Inc.* 765 N.E.2d at 1263. The Respondent, however, has not shown how Ind. Code § 6-1.1-10-36.3 is relevant to or should be considered in conjunction with Ind. Code § 6-1.1-10-25 governing tangible property owned by a post of the American Legion. Ind. Code 6-1.1-10-25 (a)(8). Therefore, the Respondent failed to rebut the Petitioner's prima facie case.

Summary of Final Determination

43. The Petitioner proved by a preponderance of the evidence that it is entitled to 100% exemption of its real property.

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

- 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>>