

REPRESENTATIVE FOR PETITIONER: Patrick R. Hess, Attorney, Beckman Lawson LLP

REPRESENTATIVE FOR RESPONDENT: Kim Gephart, Noble County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

C AND C RASH, LLC,	)	Petition No.: 57-007-06-2-8-00001
	)	
Petitioner,	)	Noble County
	)	
v.	)	Wayne Township
	)	
NOBLE COUNTY PROPERTY	)	Parcel No.: 57-07-29-300-047.000-020 and
TAX ASSESSMENT BOARD OF	)	Personal Property
APPEALS,	)	
	)	Assessment Year: 2006
Respondent.	)	

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

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**August 30, 2007**

**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 real and personal property that is leased to the Tri-County Dance Academy qualify for the educational use tax exemption provided in Ind. Code § 6-1-1-10-16?**

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

### **Procedural History**

1. C and C Rash, LLC (Petitioner) filed an Application for Property Tax Exemption (Form 136) for the 2006 assessment on May 15, 2006. On July 3, 2006, the Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the exemption and finding both the real and personal property 100% taxable.
2. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Petition for Review of Exemption (Form 132) on August 1, 2006, seeking an administrative review of the PTABOA determination.

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

3. The Board's designated Administrative Law Judge, Patti Kindler, held the hearing in Albion on June 5, 2007. She did not conduct an on-site inspection of the property.
4. The following persons were sworn as witnesses and offered testimony at the hearing:
  - Christine E. Rash, owner,
  - Kim Gephart, County Assessor,
  - Delbert Linn, PTABOA member,
  - Mary Beth Lemings, PTABOA member,
  - George Clifford, PTABOA member.
5. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 – Form 136 Petition,
  - Petitioner Exhibit 2 – Letter from Scott R. Frick, CPA, dated February 25, 2005,
  - Petitioner Exhibit 3 – 2004 Statement of Assets, Liability and Member's Equity,
  - Petitioner Exhibit 4 – 2004 Statement of Revenue, Expense and Member's Equity,
  - Petitioner Exhibit 5 – Articles of Organization,

Petitioner Exhibit 6 – Certificate of Organization,  
Petitioner Exhibit 7 – Operating Agreement,  
Petitioner Exhibit 8 – Tuition Schedule for Tri-County Dance Academy,  
Petitioner Exhibit 9 – Brochure for Tri-County Dance Academy,  
Petitioner Exhibit 10 – Tri-County Dance Academy Structural Inventory and  
Function,  
Petitioner Exhibit 11 – General and Specific Syllabi,  
Petitioner Exhibit 12 – Curricula lists for Noble County and area public schools,  
Petitioner Exhibit 13 – Property Assessment Detail Report for 2005,  
Petitioner Exhibit 14 – Form 132 Petition,  
Petitioner Exhibit 15 – Addendum to the Form 132 Petition,  
Petitioner Exhibit 16 – Form 120, Notice of Action on Exemption Application,  
Petitioner Exhibit 17 – PTABOA minutes,  
Petitioner Exhibit 18 – Lease,  
Petitioner Exhibit 19 – Letter from Sherry Grate,  
Petitioner Exhibit 20 – Letter from Lisa Helmuth.

6. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Copies of Ind. Code § 6-1.1-10-16, Ind. Code § 36-1-2-13, Ind. Code § 36-1-10-1, and PTABOA minutes,  
Respondent Exhibit 2 – Form 136 Petition,  
Respondent Exhibit 3 – Petitioner’s Financial Statements for 2004,  
Respondent Exhibit 4 – Curricula lists for Noble County and area public schools,  
Respondent Exhibit 5 – Addendum to the Form 132 Petition.

7. The following additional items are part of the record:

Board Exhibit A – Form 132 Petition with attachments,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing sign-in sheet,  
Board Exhibit D – Order Regarding Exemption Hearing Conduct.

8. The subject property is land, a building, and personal property used and occupied by the Tri-County Dance Academy for the Performing Arts (TC Dance) located at 810 Commerce Drive in Kendallville. According to the Application for Exemption, the subject property has five studios for class instruction, two office areas, a room for costume creation and repair, two changing rooms, an area of student lockers, a lobby/waiting room, and a storage area for props. *Pet'r Ex. 1; Resp't Ex. 2.*

9. The Petitioner claims the property qualifies for exemption because it is owned, used, and occupied only for educational purposes. The Application for Exemption claims 100% exemption for the following:

Land	\$80,100
Improvements	\$279,600
Personal Property	\$9,110 <sup>1</sup>

10. The property is owned by the Petitioner and leased to TC Dance for the purpose of operating the school. The lease payment is equal to the mortgage payment. The Petitioner does not profit from the lease arrangement. *Pet'r Ex. 18; Rash testimony.*

11. The school's curriculum and syllabus demonstrate that the school offers a broad range of instruction in dance as well as instruction in theatrical arts and voice. *Pet'r Ex. 9, 11; Rash testimony.* The five full time instructors and five part time instructors employed by the school have degrees in their area of expertise. *Rash testimony.* The school has been in operation for fifteen years. The sole use of the property is the operation of the school. *Rash testimony.*

12. The school provides training and instruction equivalent to that provided by tax supported schools located outside of Noble County. *Pet'r Ex. 12, 19; Rash testimony.* The training

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<sup>1</sup> In determining that the subject property is 100% taxable, the PTABOA's notice gives the same values for land and improvements, but only \$8,180 for personal property. This small difference regarding the personal property was not explained by either party. Nevertheless, the Board's final determination makes that difference insignificant.

and instruction provided by the school are not readily available in the Noble County school systems. *Rash testimony.*

### **Basis for Exemption and Burden**

13. As a general proposition, all tangible property in Indiana is subject to property taxation. Ind. Code § 6-1.1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1. This provision is not self-enacting: exemptions require specific legislation.
14. All property receives protection, security, and services from the government such as fire protection, security from the police, and public education. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support. When property is exempted from taxation, the effect shifts 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). This transfer of the tax burden to others is not an inconsequential shift. Therefore, worthwhile activities or noble purposes alone are not sufficient to qualify for tax exemption. One who claims exemption must demonstrate that the purportedly exempt property 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, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).
15. A Petitioner seeking review of an assessing official's determination 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).

16. In making its case, one 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”).
17. 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.

### Analysis

18. Property that “is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes” can be exempt from property taxation. Ind. Code § 6-1.1-10-16.
19. Educational use does not require classes that are identical to those of tax-supported institutions. *Trinity School of Natural Health, Inc. v. Kosciusko Co. PTABOA*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003). A Petitioner can meet the test by providing courses found in tax-supported schools, or by providing courses related to those found in tax-supported public schools. “Indeed, taxpayers that fill an educational void can relieve the State’s burden by adding a new course of study as much as they can by providing a program that is a direct analogue to classes taught in Indiana’s tax-supported school and universities.” *Id.* The taxpayer does not need to teach classes that exactly correspond with classes taught in tax-supported public schools. When a taxpayer relieves the State’s burden “to some limited extent” with programs and courses that are “related” to those found in tax-supported schools, the taxpayer can qualify for the exemption. *Id.*<sup>2</sup>

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<sup>2</sup> The Petitioner also cited *Richmond Gymnastics Training Center v. Dep’t of Local Gov’t Fin.* (Ind. Tax Ct. 2003), which granted exemption to a gymnastics training facility that offers classes and private lessons to children, as authority in support of its exemption claim. Citing this case is improper because it is designated “Not For Publication.” Ind. Tax Court Rule 17. Therefore, the Board will not address it beyond noting the Tax Court result and the result in this case are the same.

20. The closer programs are to the type of educational activities traditionally occurring in public schools, the more obvious is the public benefit. *See Professional Photographers of America, Inc., v. State Bd. of Tax Comm'rs*, 148 Ind. App. 601, 268 N.E.2d 617, 622 (1971); *State Bd. of Tax Comm'rs v. Ft. Wayne Sport Club*, 147 Ind. App. 129, 258 N.E.2d 874, 881-82 (1970).
21. Undisputed evidence establishes exclusive use of the subject property as a performing arts school offering instruction in dance lessons, theater, and voice. Undisputed evidence also establishes that comparable instruction is provided in tax supported public schools in neighboring counties, but not in the public schools of Noble County. Those facts demonstrate public benefit. The Petitioner established a prima facie case.
22. The Respondent questioned eligibility for exemption because the Petitioner is a for-profit organization, but that fact is irrelevant. Nothing in Ind. Code § 6-1.1-10-16 limits exemption to not-for-profit organizations. Indeed, the statute does not differentiate between not-for-profit organizations and for-profit organizations. *College Corner, L.P. v. Dept' of Local Gov't Fin.*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006). A for-profit status does not foreclose this exemption. *See State Bd. of Tax Comm'rs v. International Business College, Inc.*, 251 N.E.2d 39, 41-44 (Ind. App. 1969). “As early as 1879, the Indiana Supreme Court scrutinized our Constitution and its focus with respect to tax exemption statutes. The Court said that our Constitution, ‘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.’” *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 956 n.2 (Ind. Tax Ct. 1997) (quoting *State ex rel. Tieman v. City of Indianapolis*, 69 Ind. 375, 377 (1879)).
23. The Respondent also argues that dance is a social activity that precludes the exemption. If the evidence showed that dance training and other educational activities were merely incidental to the social or recreational activities, the Respondent could be correct. *See Miniature Enthusiasts*, 671 N.E.2d at 222. The Respondent, however, failed to present

facts to support its conclusory statements, which are not probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The evidence demonstrates that this school's only activity is dance, theater, and voice instruction. The Respondent failed to present probative evidence to the contrary. The mere fact that some of the school's students are adults or preschoolers does not diminish the educational benefits to the public. Similarly, it does not make the school's activities recreational in nature.

24. The Respondent also argued that even if the school uses the property for an exempt purpose, the property does not qualify for exemption because the Petitioner owns the property and leases it to the school. The Respondent argues that to qualify for exemption, the owner must not incur a profit by leasing the structure to an exempt organization. The Respondent offers no probative evidence that any such profit exists in this case and there is credible evidence that the Petitioner does not profit from the lease.
25. The Respondent is mistaken about the significance of the ownership and lease. In order to qualify for property tax exemption, a property need only to be owned for exempt purposes, occupied for exempt purposes, and used for exempt purposes. Concurrent ownership, occupation, and use by a single entity are not required. *Sangralea*, 686 N.E.2d at 959.
26. The Respondent also relied on the Board's *Wolf Lake Gun Club* Final Determination as authority that social activities are not exempt. The Respondent provided no facts or substantial analysis to establish how the *Wolf Lake* determination (regarding what the Respondent characterized as training young kids how to shoot guns) might be relevant to this case. Conclusory statements merely noting that the Board denied the educational exemption in other cases without providing specific facts and reasons as to why the situations are comparable are not probative evidence. Such statements do not support the Respondent's position. See *Lacy Diversified*, 799 N.E.2d at 1221; *Whitley Products*, 704 N.E.2d at 1119.



27. Substantial, probative evidence establishes that the Petitioner owns the property for educational purposes and that TC Dance uses and occupies the property for predominantly or exclusively educational purposes. The Respondent failed to present probative evidence to rebut or impeach that evidence.

### **Conclusion**

28. The subject property, both real and personal, is 100% exempt from property taxation under Ind. Code § 6-1.1-10-16.

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

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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>>