

REPRESENTATIVES FOR PETITIONER: David Schermerhorn, Director,
Nancy Kelty, Secretary/Treasurer,
Sylvan Lake Improvement Association, Inc.

REPRESENTATIVES FOR RESPONDENT: Kim Gephart, Noble County Assessor,
Delbert W. Linn, Mary B. Lemings, and
George L. Clifford, members, Noble County
Property Tax Assessment Board of Appeals.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

SYLVAN LAKE IMPROVEMENT)	
ASSOCIATION, INC.,)	Petition No.: 57-010-04-2-8-00001
)	
Petitioner,)	
)	Noble County
v.)	
)	Orange Township
NOBLE COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	Assessment Year: 2004
APPEALS,)	
)	Parcels: 57-04-16-200-051.000-011,
Respondent.)	57-04-09-200-182.000-010, and
)	Personal Property

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

June 7, 2006

FINAL DETERMINATION

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

Issue

Is the subject property used for charitable purposes that make it fully exempt from property tax under Ind. Code § 6-1.1-10-16?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Sylvan Lake Improvement Association, Inc. (Sylvan Lake) owns real estate and personal property located in Rome City and Orange Township.
2. On May 11, 2004, David Schermerhorn, Director of Sylvan Lake, filed an Application for Property Tax Exemption (Form 136) for 2004, requesting 100% exemption for that real estate and personal property.
3. The Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination allowing 50% exemption on October 5, 2004.
4. On October 22, 2004, Joseph Costello, President of Sylvan Lake, filed a Petition to the Indiana Board of Tax Review for Review of Exemption (Form 132), seeking an administrative review of the PTABOA's decision.

Hearing Facts and Other Matters of Record

5. Patti Kindler, the Administrative Law Judge authorized by the Board, held the hearing in Albion on March 28, 2006.
6. The following persons were sworn as witnesses at the hearing:
 - For the Petitioner – David Schermerhorn, Director, Sylvan Lake,
Nancy L. Kelty, Secretary/Treasurer, Sylvan Lake,
 - For the Respondent – Kim Gephart, Noble County Assessor,
Delbert W. Linn, PTABOA member,
Mary B. Lemings, PTABOA member,
George L. Clifford, PTABOA member.

7. The parties presented the following exhibits:
 - Petitioner Exhibit 1 – Letter to the Noble County Assessor with witness list and attached listing of contributions for the years 2000-2005,
 - Respondent Exhibit 1 – Minutes from PTABOA hearing on September 21, 2004,
 - Respondent Exhibit 2 – Copy of Ind. Code § 6-1.1-10-36.3,
 - Respondent Exhibit 3 – Categories of Exemption,
 - Respondent Exhibit 4 – Department of Local Government Finance memorandum on "New Exemption Procedures" dated April 2004,
 - Respondent Exhibit 5 – Department of Local Government Finance "Court Case Update" memorandum dated April 17, 2002,
 - Respondent Exhibit 6 – Property record cards for parcel 57-04-16-200-051.000-011, located in Rome City Corporation, and parcel 57-04-09-200-182.000-010, located in Orange Township.¹

8. The Board recognizes the following additional items as part of the record of proceedings:
 - Board Exhibit A – Form 132 Petition,
 - Board Exhibit B – Notice of hearing on Petition,
 - Board Exhibit C – Hearing sign-in sheet.

9. This appeal applies to both real and personal property. Parcel 57-04-16-200-051.000-011 is a 1.842-acre parcel with a commercial building. Parcel 57-04-09-200-182.000-010 is a .497-acre vacant commercial site. *Resp't Ex. 6*. On the Form 120, the assessed value listed for personal property is \$18,070. *Board Ex. A*.

10. The Administrative Law Judge did not conduct an on-site inspection of the property.

¹ The Notice of Action on Exemption Application, Form 120, incorrectly identifies the parcel numbers as 05-100880-00 and 04-101212-00. The property record cards submitted at the Board hearing, however, identify these numbers as tax ID numbers, not parcel numbers.

11. The PTABOA determined the real and personal property to be 50% taxable for 2004. *Board Ex. A.* The Petitioner contended the land, improvements, and personal property should be entirely exempt under Ind. Code § 6-1.1-10-16. *Id.*

12. Evidence relevant to this determination includes the following:
 - a. Sylvan Lake, a 501(c)(3) non-profit corporation, conducts bingo events three times a week in its meeting hall under the charitable gaming license provisions of the Indiana Department of Revenue's Charitable Gaming Division. An all-volunteer workforce from the association works at the bingo fundraisers. Most of the bingo players are not members of Sylvan Lake. Although a few members occasionally play bingo, the game is not a social function for Sylvan Lake or its members. Rather, the members volunteer to help charitable fundraising activity. Some of the bingo proceeds are used to provide professional assistance to enhance wildlife conservation and the natural beauty of the Sylvan Lake area. The rest of the proceeds are donated to charitable agencies. Sylvan Lake uses the meeting hall for its association meeting once each year. Other than that, the building is used exclusively for the bingo operations and for meetings held by other charitable groups. *Schermerhorn testimony.* Sylvan Lake has been 100% exempt from property taxation for more than ten years. *Board Ex. A at 2.*

 - b. The Charitable Gaming Division conducts routine audits of the bingo operation to determine compliance with the statutes governing charitable gaming. During a recent audit, an agency official indicated Sylvan Lake had the "cleanest" operation examined to date. He commended the association on its volunteerism and assistance to local charitable organizations. *Schermerhorn testimony.*

 - c. The bingo operation helps achieve the association's mission to preserve the lake. Sylvan Lake uses some of its bingo revenues for lake clean up and patrol. Approximately \$40,000 is budgeted annually for weed control. *Id.* Sylvan Lake also relieves taxpayer burden by giving donations from the bingo proceeds to various

charitable agencies such as the Boy Scouts, the Rome City Police Department, the Orange Township Fire Department, East Noble schools, Junior Achievement, youth baseball and softball programs, and the Kendallville Library. *Kelty testimony; Pet'r Ex. 1 at 2.* Sylvan Lake gave more than \$186,880 in bingo donations to various agencies in the last six years. Local charitable organizations that otherwise would have depended on taxpayer dollars received \$143,725 of those donations. *Schermerhorn testimony.*

- d. State gaming regulations require that Sylvan Lake keep enough money in the bank to fund the operation from dues and interest. Eighty percent of the interest earned from the bingo proceeds goes to charitable programs that have requested money. Sylvan Lake also allows charitable groups to use the facility throughout the year without charge. Thus, the association has helped other charitable programs, relieved taxpayer burdens, and benefits the public. *Kelty testimony.*
- e. The Respondent argued that according to Ind. Code § 6-1.1-10-36.3, a property must be owned, used and occupied for a charitable purpose more than 50% of the time to qualify for exemption. *Gephart testimony; Resp't Ex. 2.* The Respondent offered testimony that bingo is a "social" event and is not "charitable" according to the applicable definition of charity. *Gephart testimony; Resp't Ex. 3.* The Respondent offered testimony that Sylvan Lake does not relieve human "wants" or "needs" to satisfy the definition of charity. *Linn testimony.* Further, a 501(c)(3) federal designation does not make a property exempt from county property tax. *Gephart testimony; Resp't Ex. 3.*
- f. The Respondent argues that donations given by Sylvan Lake do not automatically make its property exempt from taxation. *Gephart testimony.* Predominate use is the proper way to determine a property tax exemption. *Resp't Ex. 5.* The PTABOA allowed 50% exemption to the land, improvements, and personal property after reviewing usage and donations. *Gephart testimony; Resp't Ex. 1.*

Jurisdiction

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.

Administrative Review and Burden

14. 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).
15. 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”).
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

17. The general rule is that all property 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 from property taxation. IND. CONST., Art. 10, § 1.

18. An exemption shifts the amount of taxes to other parcels that are not exempt. *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996). 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 a public purpose. *Id.* 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. Property that “is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes” is exempt from property taxation. Ind. Code § 6-1.1-10-16. For this exemption, the property must be predominantly used or occupied for one or more of the listed purposes. Indiana Code § 6-1.1-10-36.3 provides:
- For purposes of this section, property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more purposes during more than fifty (50%) of the time that it is used or occupied in the year that ends in the assessment date of the property.
- See State Bd. of Tax Comm'rs v. New Castle Lodge #147 Loyal Order of Moose*, 765 N.E.2d 1257, 1259 (Ind. 2002).
20. 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) (non-profit status does not entitle a taxpayer to tax exemption).

Analysis

21. The PTABOA granted a 50% exemption to the property. The exact reasons for that action are not clear, but this fact demonstrates the Respondent's agreement that at least a

portion of the use is charitable. The parties disagree about the percentage of use that qualifies for exemption.

22. The Respondent contends that the Board must focus on the predominant use of the property and not upon what the Petitioner does with the proceeds from that use. In the Respondent's view, bingo 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. Similarly, the Respondent contends the bingo games fail to provide public benefits that would justify allowing the tax exemption. *See Knox Co. Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 117, 182 (Ind. Tax Ct. 2005). The Respondent did not offer probative evidence or substantial explanation to establish how this position is consistent with its determination to allow 50% exemption.
23. The Respondent is correct that the predominant use test requires a 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. *State Bd. of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d. 1257, 1263 (Ind. 2002).
24. Use for the bingo operation cannot be examined in a vacuum. One cannot pass judgment on the nature of that activity without at least a cursory examination of the statutory scheme under which it operates.
25. Most gambling is illegal in Indiana pursuant to Ind. Code § 35-45-5, but that statute does not apply to certain events conducted in accordance with statutes governing bingo events, charity game nights, door prize events, raffle events, and festivals (hereinafter referred to as "charitable gaming events"). *See, e.g.* Ind. Code § 4-32-9-14; Ind. Code § 4-32-6-2.
26. Only "qualified organizations" may conduct these events. Ind. Code § 4-32-9-2; Ind. Code § 4-32-9-3. Subject to a limited number of exceptions, an entity must be licensed by the Indiana Department of State Revenue. *See* Ind. Code § 4-32-9. Qualified

organizations generally are limited to bona fide religious, educational, senior citizens, veterans or civic organizations that, among other things, operate without profit and are exempt from taxation under section 501 of the Internal Revenue Code. Ind. Code § 4-32-6-20(a). In addition, there are statutory limits on the use of net proceeds from bingo as well as strict reporting requirements for qualified organizations that conduct such events. *See, e.g.*, Ind. Code §§ 4-32-9-16 and 16.5. There are limitations on the number of events that qualified organizations may conduct. There are prohibitions against remuneration of workers who help prepare and conduct those events. *See, e.g.*, Ind. Code § 4-32-6-24; Ind. Code §§ 4-32-9-18, 19, 21, and 25.

27. In short, bingo is a highly regulated activity that may only be conducted by entities performing the very types of functions recognized as exempt under Ind. Code § 6-1.1-10-16(a). Thus, almost by definition, the conduct of licensed bingo games provides a present benefit to the public sufficient to justify the loss of tax revenue. *See Grandview Care, Inc.*, 826 N.E.2d at 182 (“the rationale justifying a [charitable purpose] tax exemption is that there is a present benefit to the general public from the operation of the charitable institution sufficient to justify the loss of tax revenue.”). Put another way, the use is so intricately connected to the charitable distribution of income that the charitable giving of the qualified entity cannot be separated from the balance of the bingo operation.
28. The Respondent also questioned the amounts that the Petitioner contributes from its net bingo revenues to qualified recipients. *Id.* The Board presumes that the Respondent is referring to Ind. Code § 4-32-9-16.5(a), which provides: “A qualified organization that receives ninety percent (90%) or more of the organization’s total gross receipts from any events licensed under this article is required to donate sixty percent (60%) of its gross charitable gaming receipts less prize payout to a qualified recipient that is not an affiliate, a parent, or a subsidiary organization of the qualified organization.” Ind. Code § 4-32-9-16.5(a).
29. Questions about the Petitioner's compliance with all of the requirements set forth in the charitable gaming statutes and the consequences of non-compliance are not for the Board

to decide. The Indiana Department of State Revenue (Department), not the Board, is charged with enforcing those statutes. *See* Ind. Code § 4-32-7.

30. In this case, the record establishes the Department's Charitable Gaming Division recognizes Sylvan Lake as a licensed qualified organization in accordance with the requirements of Ind. Code § 4-32-6-20. Thus, the Petitioner can use the subject property to conduct bingo events as a fund raising activity for lawful purposes of the organization. Ind. Code § 4-32-1-2. Proceeds from these bingo fund raising activities are used for conservation efforts or are distributed among various charities and civic organizations, including the Boy Scouts, Junior Achievement, the Kendallville Library, and the Orange Township Fire Department.²
31. There is substantial evidence that both the bingo operation and the occasional other uses of the property are used in ways that provide public benefit. This evidence is enough to establish that those uses are entirely charitable. Thus, the Petitioner presented evidence sufficient to establish a prima facie case the property should be 100% exempt. 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).
32. The undisputed evidence established that the subject property primarily is used for running a licensed bingo operation. The Respondent argued that bingo is not a charitable activity and it is merely a social use of the property. Unless the Respondent is attempting to argue that the bingo operation is only 50% of the use (a fact that is not established), this characterization appears to be inconsistent with the fact that the PTABOA already allowed a 50% exemption. Furthermore, it is inconsistent with Sylvan Lake's status as a licensed qualified organization. The conclusory testimony that playing bingo is a social use is not probative evidence. It does not support the PTABOA's case. *Lacy Diversified*

² The bingo operation is the primary use of the property. The building also is used for association membership meetings and is provided at no charge for activities of other charitable organizations. While the percentage of each use is not clearly established by the evidence in this case, none of the uses weigh against exemption.

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).

The Respondent presented no probative evidence to establish the property is used for purposes other than the charitable activities identified by the Petitioner.

33. The Respondent failed to rebut the Petitioner's prima facie case for 100% exemption in accordance with Ind. Code § 6-1.1-10-16.

Summary of Final Determination

34. The Petitioner presented evidence establishing the facility is used exclusively for exempt purposes. The Respondent did not rebut or impeach the Petitioner's evidence. Sylvan Lake's real and personal property are entitled to a 100% exemption.

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