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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Local 692 Operative Plasterers and )	Petition No.: 64-026-06-2-8-00001
Cement Masons International )	
Association )	
)	
Petitioner, )	
)	Parcel: Personal property
v. )	
)	
Porter County Property Tax )	County: Porter
Assessment Board of Appeals, )	Township: Westchester
)	Assessment Year: 2006
Respondent. )	

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

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**June 11, 2007**

**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 issue of whether the Petitioner's personal property is exempt from taxation under Ind. Code § 6-1.1-10-16.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**PROCEDURAL HISTORY**

1. The financial secretary for Local 692 Operative Plasterers and Cement Masons International Association (OPCMIA) filed an Application for Property Tax Exemption (Form 136) for personal property for the 2006 assessment year on May 2, 2006. The

Porter County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the request for exemption and finding the personal property 100% taxable on August 21, 2006.

2. Pursuant to Ind. Code § 6-1.1-11-7, OPCMIA filed a Form 132 Petition for Review of Exemption on September 7, 2006, petitioning the Board to conduct an administrative review of the PTABOA determination.

#### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on April 17, 2007, in Valparaiso, Indiana.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Ronald L. Albers, Business Agent, OPCMIA,  
Mark McCleskey, Business Manager, OPCMIA,

For the Respondent:

John R. Scott, Porter County Assessor,  
Shirley LaFever, Chief Deputy County Assessor,  
Janine A. Chrisman, President, Porter County PTABOA  
Candy Crowe, Westchester Township Assessor.

5. The Petitioner submitted the following exhibits:

Petitioner Exhibit A – Letter to the Porter County PTABOA,  
Petitioner Exhibit B – Indiana Not-For-Profit Certificate.<sup>1</sup>

6. The Respondent did not submit any exhibits.

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<sup>1</sup> The Petitioner also offered Mr. Albers' W-2's and a business card. The parties, however, did not dispute Mr. Albers' employment by the Petitioner. The ALJ, therefore, suggested that the Petitioner withdraw the exhibit because it contained confidential personal information.

7. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
  - Board Exhibit A – The 132 Petition,
  - Board Exhibit B – Notice of Hearing dated March 15, 2007,
  - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
  - Board Exhibit D – Hearing sign in sheet.
8. The subject property is personal property located at 738 Commodore Lane, Porter, Indiana, in Westchester Township, Porter County.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2006, the Porter County PTABOA determined the property to be 100% taxable. The Petitioner contends the property should be 100% non-taxable.

#### **JURISDICTIONAL FRAMEWORK**

11. 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). The Board has jurisdiction over this matter because it involves a request for a property tax exemption. All 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 THE PETITIONER'S BURDEN**

12. 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 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).

13. 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. Wash. 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”).
14. 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**

15. The general rule is that all property is subject to 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. Article 10, § 1 of the Constitution of Indiana. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.
16. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. These government 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, Nat’l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E. 2d 218 (Ind. Tax Ct.1996).
17. Worthwhile activities or noble purpose alone is not enough for tax exemption. 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 Bd. of Tax Comm’rs*, 550 N.E. 2d 850, 854 (Ind. Tax Ct.1990)).

18. 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. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel, v. State Bd. of Tax Comm'rs*, 611 N.E. 2d at 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E. 2d 936, 938 (Ind. Tax Ct. 1987).

### **Petitioner's Contentions**

19. The Petitioner contends the property should be exempt under Ind. Code § 6-1.1-10-16.
20. The Petitioner presented the following testimony in regard to this issue:
- A. The Petitioner contends that the organization is a 501(c)(3) entity. *McCleskey testimony*. In support of this contention, the Petitioner submitted an Indiana Not-For-Profit Registration Certificate. *Petitioner Exhibit B*.
  - B. The Petitioner contends that the personal property for which it seeks exemption is office equipment located in Mr. Albers' home office that is used for the non-profit organization. *McCleskey testimony; Albers testimony*. According to the Petitioner's witnesses, the equipment includes a copier, fax machine, shredder, desk, chair and file cabinets, all owned by OPCMIA. *Id.*
  - C. In response to the Respondent's contentions that the Petitioner failed to show for the PTABOA hearing, Mr. Albers testified that he received a letter from the PTABOA and turned it over to the OPCMIA's accountant in Indianapolis. *Albers testimony*. According to Mr. Albers, he was unaware that he needed to attend the PTABOA hearing because he assumed the accountant would attend the hearing. *Id.*

## Respondent's Contentions

21. The Respondent contends that the Petitioner failed to file a personal property return. *Chrisman Testimony*. According to the Respondent's witness, when the PTABOA received the Petitioner's exemption application, the PTABOA requested that the Petitioner attend the hearing to explain what relief the Petitioner sought. *Id.* Ms. Chrisman testified that the PTABOA denied the exemption because the Petitioner failed to attend the hearing. *Id.*

## ANALYSIS OF THE ISSUE

22. The Petitioner claims that the personal property should be exempt under Ind. Code §6-1.1-10-16. Pursuant to Ind. Code § 6-1.1-10-16, "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." Ind. Code § 6-1.1-10-16(a). Personal property is exempt if it is owned and used in such a manner that it would be exempt if it were a building. Ind. Code §6-1.1-10-16(e).
23. Here, the Petitioner failed to submit any evidence supporting the claim for exemption. The Petitioner did not identify any statute that exempts the property of labor union representatives from taxation. Nor are we aware of any such statute. Further, the Petitioner failed to show that its property is "owned, occupied, and used" for "educational, literary, scientific, religious or charitable purposes." The Petitioner did not identify the purposes and objectives of its organization. The Petitioner failed to offer its by-laws or articles of incorporation into evidence. In fact, the Petitioner presented no evidence of the use of the property whatsoever.
24. The taxpayer bears the burden of proof in showing that it is entitled to the exemption it seeks. *See State Bd. of Tax Comm'rs v. New Castle Lodge # 147, Loyal Order of the Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Thus, when seeking a charitable

purposes exemption, the taxpayer must not only demonstrate that it owns, occupies, and uses its property for a charitable purpose, but also that the charitable purpose is the property's predominant use. *See State Bd. of Tax Comm'rs v. Fort Wayne Sport Club, Inc.*, 147 Ind. App. 129, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970) (stating that "it is the 'dominant use' of the property which determines whether such property is tax exempt").

25. The evidence that the Petitioner operates as a Not-For-Profit organization alone does not support an exemption from taxation of the property. 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. *See Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status does not automatically entitle a taxpayer to tax exemption). The Petitioner is required to show the *use* of the specific property in question qualifies under an applicable exemption statute.
26. The Petitioner failed to raise a prima facie case that the subject property is exempt under any of Indiana's statutory exemptions.<sup>2</sup> Where the Petitioner fails to make a prima facie case, the Respondent's burden to support its determination with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **SUMMARY OF FINAL DETERMINATION**

27. The Board finds the PTABOA properly denied the Application for Property Tax Exemption because the Petitioner failed to provide any probative evidence to support an exemption for the subject property.

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<sup>2</sup> We note that there has been no personal property tax assessed on the subject property. Therefore, an exemption on such property would be futile. If any tax were assessed on the subject property, the Petitioner would be entitled to file another application for Property Tax Exemption. However, the Petitioner would still be required to show the property's use fell under an applicable exemption statute.

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

**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](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>.