

REPRESENTATIVES FOR PETITIONER:
Arnold H. Brames, Attorney

REPRESENTATIVES FOR RESPONDENT:
Kristi Carroll, Posey County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

HOLLIE & ANNA OAKLEY	)	Petition Nos.:	65-001-05-2-8-00001
FOUNDATION, INC.	)		65-001-05-2-8-00002
	)		65-001-05-2-8-00003
Petitioner,	)		65-001-05-2-8-00004
)		
v.)		
	)	County:	Posey
POSEY COUNTY PROPERTY TAX	)	Township:	Bethel
ASSESSMENT BOARD OF APPEALS	)	Parcels:	001-51241-00; 001-58394-00
	)		001-58124-10; 001-50394-00
Respondent.)		
	)	Assessment Year:	2005

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

November 6, 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 oil and gas leases owned by the Petitioner are exempt from property taxation pursuant to Indiana Code § 6-1.1-10-16(a), (b) and (e).

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Arnold H. Brames, counsel for Hollie & Anna Oakley Foundation, Inc. (the Petitioner), filed Form 132 “Petition for Review of Exemption” petitions on July 14, 2005, petitioning the Board to conduct an administrative review of the above petitions. The determination of the Posey County Property Tax Assessment Board of Appeals (PTABOA) was issued on June 15, 2005.

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 July 27, 2006, in Mount Vernon, Indiana, before Rick Barter, the duly designated Administrative Law Judge authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2.¹
4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Eston L. Perry, Vice President and Treasurer, Hollie & Anna Oakley Foundation, Inc.

¹ The Petitioner’s representative requested, and the ALJ granted, a 30-day period after the hearing to submit additional evidence to the ALJ, the Board and the Respondent. The ALJ also granted a 30-day period for the Respondent to file a response to the Petitioner’s additional evidence. On August 28, 2006, Mr. Brames telephoned the ALJ to inform him that the additional evidence had been mailed August 23, 2006, but had been returned to sender with the notation, “No such number.” The ALJ advised the Petitioner to re-mail the evidence and asked him to include proof of the original mailing. The evidence arrived at the ALJ’s station on August 30, 2006, and included a copy of the front of the original envelope dated August 23, 2006. As such, the evidence is considered timely filed.

For the Respondent:

Kristi D. Carroll, Posey County Assessor

5. The Petitioner presented the following exhibits:

Petitioner's Exhibit 1 – Certificate of Existence from Indiana Secretary of State dated July 11, 2006

Petitioner's Exhibit 2 – Articles of Incorporation for Oakley Foundation

Petitioner's Exhibit 3 – Articles of Amendment and Restatement of the Articles of Incorporation for Oakley Foundation

Petitioner's Exhibit 4 – Article of Amendment to the Articles of Incorporation for Oakley Foundation

Petitioner's Exhibit 5 – By-Laws of Oakley Foundation

Petitioner's Exhibit 6 – Amended By-Laws of Oakley Foundation

Petitioner's Exhibit 7 – Oakley Foundation 2001 through 2004 tax return Form 990-PF

Petitioner's Exhibit 8 – Copy of IRS letter stating Indiana Heart Foundation, Inc., is 501(c)(3) exempt organization dated April 21, 1949

Petitioner's Exhibit 9 – Copy of U.S. Treasury letter to Oakley Foundation dated October 29, 1958

Petitioner's Exhibit 10 – Copy of IRS notice to Oakley Foundation dated June 16, 1972

Petitioner's Exhibit 11 – Copy of IRS letter to Oakley Foundation dated March 27, 2000

Petitioner's Exhibit 12 – List of Petitioner's grants for years 2001 through 2006

Petitioner's Exhibit 13 – Petitioner's Representative's Brief in Support of Exemptions

Respondent – No exhibits were presented

6. The following additional items are officially recognized as part of the record of proceedings:

Board Exhibit A – The Form 132 Petition with attachments

Board Exhibit B – Notice of Hearing

Board Exhibit C – Hearing sign-in sheet

Board Exhibit D – Order Regarding Conduct of Exemption Hearing

7. The subject properties are oil and gas leases providing rights to the minerals on and under the surface of the real property at various locations in Bethel Township, Posey County.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. For 2005, the PTABOA denied the Petitioner's request for an exemption and determined the mineral rights are 0% exempt for parcel 001-51241-00, 0% exempt for parcel 001-58394-00, 0% exempt for parcel 001-58124-10, and 0% exempt for parcel 001-50394-00.
10. For 2005, the Petitioner is requesting a 100% exemption for the oil and gas leases on all four parcels.

Jurisdiction

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). All such appeals are conducted under Ind. Code § 6-1.1-15.

Administrative Review and 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 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.
16. 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).
17. 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)).
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. 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

19. The Petitioner contends that the oil and gas leases at issue are personal property and should be 100% exempt under Ind. Code § 6-1.1-10-16(a), (b) and (e), because they are held by the Foundation as trustee and produce income which is used by the Foundation in charitable pursuit. *Brames argument*.

20. The Petitioner presented the following evidence and testimony in regard to this issue:
 - a. The Petitioner testified that the subject parcels were transferred from the Oakley Trust (the Trust) to the Foundation when the last survivor of the Trust passed away. *Perry testimony*.

 - b. The Petitioner argues that the Foundation is a charitable foundation. *Brames argument; Petitioner Exhibits 2 – 6*. According to the Petitioner, the Foundation is exempt from state and federal income tax pursuant to exemption letters received from the U.S. Treasury Department, Internal Revenue Service, over the years. *Id.; Petitioner Exhibits 8 – 11*.

 - c. The Petitioner contends that all property that is owned by the Foundation, whether it is in the form of real estate, personal property or income from such property is used solely for educational, literary, scientific, religious and charitable purposes. *Brames argument*. The Petitioner's witness testified that the Foundation works hard to generate as much revenue as possible which is then paid out to municipalities, for medical research, for institutions of higher education, and other similar purposes. *Perry testimony*.

 - d. The Petitioner contends that five-percent of the value of the Foundation's assets is contributed to educational, literary, scientific and municipal purposes on an

annual basis. *Perry response to Brames question; Board Exhibit A.* In support of this contention, the Petitioner submitted lists of grants given along with the first three pages of the Petitioner's tax returns from 2001 through 2006. *Petitioner Exhibit 12; Board Exhibit A.*

- e. The Petitioner argues that the oil and gas interests are personal property even though they are taxed on the property tax records. *Brames argument.* According to the Petitioner, the appeals before the Board are based on Ind. Code § 6-1.1-10-16 (a), (b) and (e). *Id.* The Petitioner contends that personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building. *Id.* Thus, the Petitioner contends, the properties are exempt from property taxation if they are owned, occupied or used by a person for educational, literary, scientific, religious or charitable purposes. *Id.*
 - f. The Petitioner claims that the Foundation has other gas and oil mineral rights throughout the country, none of which are taxable in other states. *Perry testimony.* The Petitioner further claims that the Foundation does not pay any property taxes to any other entity in the state of Indiana, other than in Posey County. *Id.*
 - g. Finally, the Petitioner argues that the properties are entitled to be 100% exempt because they fit the statute and the income the Foundation gets from the property is simply passed through the Foundation and not used for the benefit of the Foundation. *Brames argument.* The Petitioner further argues that it does not want to set a precedent where the Foundation would be taxable for some property and not for others. *Id.*
21. The Respondent contends that the exemption was denied because neither the county assessor nor the PTABOA could find any exemption for gas and oil interests except for the State. *Carroll testimony.*

22. The Respondent presented the following testimony in support of the assessment:
- a. The Respondent contends that because the oil and gas leases are income producing properties, they are taxable properties. *Carroll testimony*. According to the Respondent, presently there are no properties exempt from paying property taxes on oil and gas leases including churches, colleges, universities, and public schools other than the State of Indiana. *Id.*
 - b. The Respondent also contends that they could find nothing in the statutes that would exempt oil and gas interests from property taxes. *Carroll testimony*. The Respondent admitted, however, that had the properties been a building, an exemption would have been granted. *Id.*

Analysis of Issue

23. The Petitioner contends that the subject parcels are entitled to a 100% exemption. According to the Petitioner, the oil and gas leases produce income which is used by the Petitioner to make a variety of grants to organizations which are educational, literary, scientific, religious, and charitable in nature. Thus, the Petitioner argues, the oil and gas leases meet the standards for exemption under Ind. Code Ind. Code § 6-1.1-10-16.
24. Exemption statutes are strictly construed against the taxpayer. The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *See New Castle Lodge # 147, Loyal Order of Moose, Inc. v. State Bd. of Tax Comm'rs*, 733 N.E.2d 36, 38 (Ind. Tax Ct. 2000), *aff'd*, 765 N.E.2d 1257 (Ind. 2002). Despite this, “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).

25. 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).
26. 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).

27. Here, the Petitioner’s written evidence and testimony demonstrating the charitable nature of the foundation including its organization, its stated purposes, its methods, its officers and lists of its annual giving, constitute sufficient evidence that the Petitioner owns, occupies and uses the property for charitable purposes. *Brames testimony, Petitioner’s Exhibits 1 through 12.*
28. The Petitioner, however, is incorrect that oil and gas leases in Indiana are personal property. The Property Assessment Guidelines state in relevant part that “Oil or gas interests include, but are not limited to: royalties, overriding royalties, mineral rights, or working interests in any oil or gas located on or beneath the surface of the land. An oil or gas interest is subject to assessment and taxation as real property annually by the township assessor....” *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A at Ch. 2, p. 108 (the GUIDELINES) (incorporated by reference at 50 IAC 2.3-1-2).* As such, the subject parcels are real property, not personal property.
29. Ind. Code § 6-1.1-10-16 provides, in part, that “(a) 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 and charitable purposes;” and “(e) Personal property is exempt from property taxation if it is owned and used in such a manner that it will be exempt under subsection (a) ...if it were a building.” Ind. Code § 6-1.1-10-16 (a) and (e).² The oil and gas leases are not “a building” as contemplated in subsections (a) and (b). Nor are they personal property as contemplated in subsection (c).
30. Indeed, nowhere in the exemption provisions, Indiana Code § 6-1.1-10 *et seq.*, were we able to identify any provision that would exempt oil and gas leases. An exemption is “a situation where a certain type of property, or the property of a certain kind of taxpayer, is not taxable ...” Ind. Code § 6-1.1-1-6. Ind. Code § 6-1.1-10-16 (a), (b) and (e) exempts certain types of property – buildings and personal property – when used for charitable or other specified purposes. If the legislature had intended *all* property owned, occupied

² The Petitioner also refers to Ind. Code § 6-1.1-10-16(b). That section, however, applies to a building “owned, occupied and used by a town, city, township, or county.” The Petitioner presented no evidence that it is a town, city, township or county.

and used for charitable purposes to be exempt, the legislature could have used the phrase “tangible property” as it did in other provisions.³ *See e.g.* Ind. Code § 6-1.1-10-17 (“Tangible property is exempt from property taxation if it is owned by a corporation which is organized and operated under IC 10-18-7 for the purposes of perpetuating the memory of soldiers and sailors”). In Ind. Code § 6-1.1-10-16 (a), (b) and (e), the legislature did not use such language.

31. Use of property by a nonprofit entity does not establish any inherent right to exemptions. *See Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge # 147*, 733 N.E.2d at 38. There is no statute that can reasonably be read as granting a property tax exemption for oil and gas leases regardless of their use. As such, we are bound to deny the Petitioner’s appeal. The Petitioner’s purposes are clearly charitable, but the remedy it seeks here must be addressed by the legislature.
32. Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Summary of Final Determination

31. The Petitioner failed to provide sufficient evidence of the property’s usage. The Board finds that the property should remain 100% taxable as determined by the Posey County PTABOA.

³ “‘Tangible property’ means real property and personal property...” Ind. Code § 6-1.1-1-19.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review 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>.