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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Evansville Aerie # 427 FOE,	)	Petition Nos.:	82-026-04-2-8-05753
	)		82-026-04-2-8-02998
Petitioner,	)		
	)	Parcel:	04-060-06-044-001
v.	)		04-02-03760 (Personal property)
	)		
Vanderburgh County Property Tax	)	County:	Vanderburgh
Assessment Board of Appeals,	)	Township:	Knight
	)		
Respondent.	)	Assessment Year:	2004

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

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**November 1, 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 subject property qualifies for a charitable use exemption under Ind. Code § 6-1.1-10-16.

**PROCEDURAL HISTORY**

2. Bob Steele, Secretary of Evansville Aerie #427 FOE, filed an Application for Property Tax Exemption (Form 136) for real and personal property for the 2004 assessment year on April 28, 2004. The Vanderburgh County Property Tax Assessment Board of Appeals

(PTABOA) issued its determinations denying the request for exemption and finding the real and personal property 100% taxable on September 20, 2005.

3. Pursuant to Ind. Code § 6-1.1-11-7, Evansville Aerie # 427 FOE, filed Forms 132 Petition for Review of Exemption on October 5, 2005, petitioning the Board to conduct an administrative review of the PTABOA determinations.

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

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Debra Eads, held a hearing on August 15, 2006, in Evansville, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Bob Steele, Secretary of Evansville Aerie # 427 FOE

For the Respondent:

Candy Wells, Vanderburgh County Hearing Officer.

6. The Petitioner did not submit any exhibits.
7. The Respondent did not submit any exhibits.
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The 132 Petition  
Board Exhibit B – Notice of Hearing dated June 20, 2006,  
Board Exhibit C – Notice of County Assessor as additional party,  
Board Exhibit D – Hearing sign in sheet.

9. The subject property is the real estate (parcel 04-060-06-044-001) and personal property (parcel 04-02-03760) located at 6000 Old Boonville Highway in Evansville, Indiana.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2004, the Vanderburgh County PTABOA determined the property to be 100% taxable. The Petitioner contends the property should be 100% non-taxable.

### **JURISDICTIONAL FRAMEWORK**

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

### **Basis of Exemption and Burden**

13. 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.
14. 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. *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).

15. 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).
16. 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)).
17. 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**

18. The Petitioner contends the property should be exempt under Ind. Code § 6-1.1-10-16.
19. The Petitioner presented the following testimony in regard to this issue:
  - A. The Petitioner contends that the subject property has been discriminated against because it was determined to be taxable by Vanderburgh County and other Fraternal Order of Eagles property throughout the State of Indiana have been deemed non-taxable. *Steele testimony*. According to the Petitioner, all charitable activities “are done at the bar” and the County has determined that the bar area is taxable making the

charitable activities conducted there also taxable. *Id.* A large room in the building is also used to raise money for charity, but the Eagles have been told that areas used for dancing cannot be non-taxable. *Id.*

- B. The Petitioner's witness testified that approximately \$6,700 was contributed to charity last year. *Steele testimony.* Any other income generated by the Eagles was used for upkeep of the structure. *Id.* Further, on most weekends, one room of the structure is rented to the public for \$400 per occasion. *Id.* The Petitioner contends that, because much of the subject property is vacant, it is difficult to establish that more than 50% of the building is used for charitable work. *Id.* Finally, the Petitioner argues that it is unable to complete the information requested by the County detailing the time each room is used and for what purpose it is used. *Id.*

### **Respondent's Contentions**

20. Respondent contends that the subject property is not used for charitable purposes a sufficient amount of time in order to meet the requirements for non-taxable status.
21. The Respondent presented the following evidence and testimony in regard to this issue:
- A. The Respondent argues that the County complied with the guidelines set forth in P.L. 264-2003 (HEA 2005) that requires a room-by-room use analysis in order to determine taxable status. *Wells testimony.*
- B. According to the Respondent, the room-by-room analysis done by the County determined the property to be 63.95% taxable and 36.05% non-taxable. *Wells testimony.* Because the non-taxable percentage did not reach 51%, the Respondent contends, the predominant use of the property is taxable. *Id.*

## Discussion and Analysis

22. The Petitioner contends that it is entitled to an exemption because the subject property is owned, occupied and used for charitable purposes. The Indiana General Assembly has provided that “[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for education, literary, scientific, religious, or charitable purposes.” Ind. Code § 6-1.1-10-16(a). Similarly, a tract of land is exempt if “a building that is exempt under subsection (a) or (b) is situated on it.” Ind. Code § 6-1.1-10-16(c). Finally, personal property is exempt “if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) [of Ind. Code § 6-1.1-10-16] if it were a building.” Ind. Code § 6-1.1-10-16-(e).
23. When interpreting the exemption provided by Ind. Code § 6-1.1-10-16(a), “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).
24. 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).

25. 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).
26. Here, the Petitioner claims that it should be granted an exemption solely based on the Petitioner’s contention that other Eagles’ organizations are receiving non-taxable status in the counties where they are located. *Steele testimony*. The Petitioner, however, presented no evidence to support this allegation. The Petitioner failed to present any testimony regarding the use of the subject property. Further, the Petitioner offered no evidence showing what facilities are granted tax exempt status and how those exempt facilities are predominantly used. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). An unsupported allegation that “other” facilities are tax exempt cannot reasonably be seen as

evidence that the subject property is entitled to exempt status. Therefore, the Petitioner failed to show that it meets the “predominant use” standard for the subject property.

27. 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**

28. The Petitioner failed to provide evidence that the “predominant use” of the property is for charitable purposes. Therefore, the Board finds that the property, both real and personal, should remain taxable as determined by the Vanderburgh County PTABOA.

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>.