
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

River City Eagles, Aerie #4023)	Petition No.: 82-029-04-2-8-01447
)	Parcel: 11-590-29-038-012
Petitioner,)	
)	
v.)	
)	County: Vanderburgh
Vanderburgh County Property Tax)	
Assessment Board of Appeals.)	Township: Pigeon
)	
Respondent.)	Assessment Year: 2004

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

November 3, 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

2. River City Eagles, Aerie # 4023 (the Petitioner) filed an Application for Property Tax Exemption (Form 136) for real property for the 2004 assessment year on or about February 27, 2004. The Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the request for exemption and finding the property 100% taxable on April 15, 2005.

3. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed Form 132 Petition for Review of Exemption on May 16, 2005, petitioning the Board to conduct an administrative review of the PTABOA determination.

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 14, 2006, in Evansville, Indiana.

5. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner:
 - Carrolee Mayhugh, River City Eagles, Aerie # 4023

 - For the Respondent:
 - Candy Wells, Vanderburgh County Hearing Officer.

6. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – December 1992 Fraternal Order of Eagles letter; 1940 Internal Revenue Service documents.

7. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Exemption Memorandum.

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 a three story building located at 728 Court Street in Evansville, Indiana.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2004, the PTABOA determined the subject property to be 100% taxable. The Petitioner contends that the subject property should be non-taxable at least for a percentage of the property.

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 and other evidence in regard to this issue:
- A. The Petitioner’s representative testified that Fraternal Order of Eagles was established in 1898 and has a mission of “people helping people”. *Mayhugh testimony*. River City Aerie 4023 was established in 1982. *Id.* According to the Petitioner, River City Aerie 4023 is a tax-exempt 501(c) non-profit organization for federal income tax purposes. *Petitioner Exhibit 1*.
 - B. The Petitioner contends that River City Aerie 4023 is required to do charitable work or the charter will be lost. *Mayhugh testimony*. According to the Petitioner, the organization supports multiple local charities and raises funds for medical research and to support abused children. *Id.* River City has also helped Hurricane Katrina victims who relocated to Evansville. *Id.*
 - C. According to the Petitioner, the main room in the building is the “social room” where all the charitable work takes place. *Mayhugh testimony*. The majority of the building is used to raise money for charity. *Id.* According to the Petitioner, money is raised through the staging of dances with live music. *Id.* The Petitioner’s witness admitted, however, that the public can only visit the facility one day a month and that day is used to promote membership. *Id.* Further, the Petitioner’s witness testified that the bar is membership only and the income is used to cover the overhead of the building. *Id.*
 - D. Finally, the Petitioner contends that the Form 136 filed by the Petitioner contained erroneous information about part of the building being rented for wedding receptions. *Mayhugh testimony*. According to the Petitioner’s witness, one room in the building was rented once in 2003 and once in 2004 for a total rental income of \$150. *Id.*

Respondent's Contentions

20. The Respondent presented the following evidence in regard to this issue:
- A. The county made an effort to comply with the requirements stated in P.L. 264-2003 (HEA 2005) by requesting a floor plan of the improvement with indications of the usage of each area. *Wells testimony*. The submitted floor plan indicates three floors in the building while the county records indicate a one-story building. *Id.*
 - B. Repeated efforts to contact the Petitioner in order to discuss the discrepancy in the square footage of the building and to clarify the exact use of each room were unsuccessful. *Wells testimony*. The Petitioner reported square footage that did not match to the total square footage of a three-story building and the Respondent could not reconcile the discrepancy. *Id.*
 - C. The lack of specific information concerning the use of each area of the building made it impossible for the PTABOA to make a reasonable determination of the taxable status of the property. *Wells testimony and Respondent Exhibit 1.*

Discussion and Analysis

21. The Petitioner claims 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 b a person for education, literary, scientific, religious, or charitable purposes.” Ind. Cod § 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).
22. 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).

23. 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).

24. 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).

25. Here, the Petitioner contends that the predominant use of the property is charitable. *Mayhugh testimony*. While the Petitioner claimed 100% exemption on its Application for charitable exemption, the Petitioner's witness testified that the property was only entitled to "some percentage" exemption. According to the Petitioner's witness, the "majority" of the building is used to raise money. The Petitioner's witness, however, did not specify what the "majority" was and, in fact, testified regarding membership drive events and testified that the facility has a bar area that is for members only.
26. The Petitioner makes a good start in its presentation, but identifying the charities which the Petitioner supports is insufficient to raise a prima facie case. Ind. Code § 6-1.1-10-36.3(c) provides that property is exempt 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" for an exempt purpose. Thus, Petitioner must show what percentage of time the building is used for charitable purposes and what percentage of time the building is used for social or fraternal purposes such as membership drives or dances.¹
27. 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.*

¹ A chart was attached to the Form 132 that identified various functions and charities but neither party referenced or addressed this document at hearing. Further, the Board was unable to determine the meaning of the columns or the figures within. Nor is it the Board's duty to determine what percentage of exemption the property should receive. *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").

State Bd. of Tax Comm'rs, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A Petitioner's "declaration of charity" is insufficient to show 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*, 261 N.E.2d at 878. The property may, in fact, be entitled to some exemption. The Petitioner, however, failed to identify what percentage of the property is used for exempt purposes. Thus, the Petitioner failed to raise a prima facie case that the "predominant use" of the property is non-taxable.

28. 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

29. 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 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.

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>.