

REPRESENTATIVE FOR PETITIONER:

William Cummins, manager

REPRESENTATIVES FOR RESPONDENT:

Charles K. Todd, Jr., attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

United Ancient Order of Druids	)	Petition Nos.: 89-014-08-2-8-00001
Grove #29,	)	89-014-08-2-8-00002
	)	
Petitioner,	)	Parcels: 1291116800 (personal property)
	)	500522070600929
v.	)	
	)	County: Wayne
Wayne County Property Tax	)	Township: Wayne
Board of Appeals	)	
	)	Assessment Year: 2008
Respondent.	)	

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

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**June 22, 2009**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUE**

1. The issue presented for consideration by the Board was whether the subject property qualifies for exemption under Indiana Code § 6-1.1-10-16 for 2008.

### **PROCEDURAL HISTORY**

2. The United Ancient Order of Druids, Grove #29 (the Druids), owns real estate and personal property located at 123 South 8<sup>th</sup> Street in Richmond. William Cummins, club manager, filed two Applications for Property Tax Exemption (Form 136) for the property for the 2008 assessment year on May 8, 2008. The Wayne County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the property is 100% taxable on August 22, 2008.
3. Pursuant to Indiana Code § 6-1.1-11-7, William Cummins, club manager, filed two Form 132 Petitions for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on September 20, 2008.

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

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on March 31, 2009, in Richmond, Indiana before Alyson Kunack, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

William Cummins, club manager  
Jack Truitt, club member

Russell Wright, club member  
George Sauer, club member

For the Respondent:<sup>1</sup>

Michael P. Statzer, Wayne County Assessor  
Joseph L. Kaiser, PTABOA President  
Richard D. Lee, PTABOA member  
Dan Williams, PTABOA member  
Betty R. Smith, Wayne Township Assessor

6. The Petitioner submitted the following exhibits:
  - Petitioner Exhibit 1: Floor plan of clubhouse showing use
  - Petitioner Exhibit 2: List of charitable donations for 2008
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 Form 132 Petition
  - Board Exhibit B – Notice of Hearing dated February 2, 2009
  - Board Exhibit C – Hearing Sign-in sheet
9. The subject property is the Druids' clubhouse and associated personal property, located at 123 South 8<sup>th</sup> Street in Richmond, Wayne Township in Wayne County.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2008, the PTABOA determined the property to be 100% taxable. The Petitioner contends the property should be 54% exempt.

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<sup>1</sup> Denise Verhasselt, Wayne County Deputy Assessor, was also present to assist Mr. Statzer, but was not sworn and did not present any testimony.

## 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.

### ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).
14. 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”).
15. 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 FOR EXEMPTION

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. 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.
  
17. 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).
  
18. 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 at 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)).
  
19. 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).

## PARTIES' CONTENTIONS

20. The Petitioner contends that the property should be exempt, based on its previous exempt status and the charitable donations the Druids make. *Cummins testimony; Pet. Ex. 2.* According to the Petitioner's witness, until five years ago, the Druids had been exempt from property taxation. *Id.* At that time, "something was filed in error", and "a directive... came down from the State" that changed their exempt status. *Id.*
21. The Petitioner's witness testified that the Druids are a small club, and their members are mainly older people. *Sauer testimony.* According to Mr. Cummins, the clubhouse is primarily used only by members. *Cummins testimony.* A non-member is only allowed to visit twice; if they wish to keep using the clubhouse facilities, they must become a member. *Id.* The Petitioner argues that with the expenses of utilities, property taxes, and the donations the club gives out, the club is running out of money and may have to shut down. *Id.; Sauer testimony; Truitt testimony.*
22. The Respondent contends that the Petitioner does not meet the qualifications for exemption based on a charitable use. *Todd argument.* According to the Respondent, in order to qualify for exemption, a property must be owned, used and occupied for an exempt purpose—in this case, a charitable purpose. *Id.* Mr. Todd argues that exemption status is not determined by the charitable donations a taxpayer may make, but instead by the nature of the property itself. *Id.*
23. In addition, the Respondent argues that being exempt from income taxation or qualifying as a federal 501(c)(3) entity is not enough to qualify for property tax exemption. *Todd argument.* Finally, Mr. Todd argues, because the Petitioner is seeking a partial exemption, it must not only show a breakdown of the use of its property, but also how the breakdown was determined. *Id.*

## ANALYSIS

1. The Petitioner contends that its real and personal property should be 54% exempt under Ind. Code § 6-1.1-10-16. The Indiana General Assembly 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 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 was a building. Ind. Code § 6-1.1-10-16(e).
2. The taxpayer bears the burden of proof in showing that it is entitled to the exemption it seeks. *See State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of the Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Thus, when seeking a charitable purpose 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 Board of Tax Commissioners 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”).
3. 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 state 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).

4. Here the Petitioner did not meet its burden. The Petitioner merely argued that it had been exempt in the past and that the club would not survive having to pay property tax. The Petitioner is mistaken in its reliance on the prior exemption. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.*
5. Similarly, the Petitioner's evidence that it 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).
6. Finally, the Petitioner's charitable donations do not make the property owned, occupied and used for a charitable purpose. “Although charitable giving might serve as evidence to support claimed charitable use of the facility, the statutory test since 1983 has been predominant use of the facility, not distribution of income for charitable purposes.” *State Bd. of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1263 (Ind. 2002). The Petitioner presented no other evidence to show that the property is owned, occupied and used for charitable purposes. To the contrary, the Petitioner's case suggests that the property in question is used almost exclusively for members' social events. *Cummins testimony; Pet. Ex. 1.*



7. Thus the Petitioner failed to raise a prima facie case that the subject property should be exempt. 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**

8. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent.

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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Chairman,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

## IMPORTANT NOTICE

### - Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>