

REPRESENTATIVES FOR PETITIONER: Gene Brooks, Attorney

REPRESENTATIVES FOR RESPONDENT: Cheryl Musgrave, Vanderburgh County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

The Bob Hamilton Charitable Golf Foundation, Inc.,)	Petition No.: 82-019-96-2-8-00139
)	
Petitioner)	County: Vanderburgh
)	
v.)	Township: Center
)	
Vanderburgh County Property Tax Assessment Board of Appeals,)	Parcel No.: 12-020-34-085-046
)	
Respondent)	Assessment Year: 1996
)	

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

[November 22, 2002]

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

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 were:
Whether the golf course constructed and operated by the Bob Hamilton Charitable Golf Foundation, Inc. (Foundation) qualifies for exempt from property taxation

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7 the Petitioner filed a Form 132, Petition for Review of Exemption, on behalf of the Foundation petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on August 8, 1997. The determination of the PTABOA was issued on July 10, 1997.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on May 17, 2001 before Jennifer Bippus, the duly designated Hearing Officer.
4. The following persons were present at the hearing:
For the Petitioner: Gene Brooks, Attorney
Jim Hamilton
James L. Angermeier
John Hamilton

For the Respondent: Cheryl Musgrave, County Assessor
Tammy Elkins, County Hearing Officer
5. The following exhibits were presented at the hearing:
For the Petitioner:
[A] Brief in support of Appeal presented by Gene Brooks.

- [B] A copy of the Lease Agreement between the Foundation and Vanderburgh County.
- [C] A copy of the U.S. Corporate Income Tax Return for 1996 for the Bob Hamilton Charitable Golf Foundation, Inc.
- [D] The Articles of Incorporation for the Foundation.
- [E] A copy of the court case for the Foundation from Vanderburgh Superior Court from 1976.
- [F] A copy of the compiled financial statements for the Foundation for December 31, 1996 and 1995.
- [G] A listing of Marion County addresses claimed to be golf courses and their tax status.

For the Respondent:

- [A] A copy of the response to the issue presented by Cheryl Musgrave.
- [B] A copy of the Exemption Memorandum to Cheryl Musgrave from Khris Seger.
- [C] A copy of the minutes from the Vanderburgh County BOR dated June 6, 1997.
- [D] A copy of the property record card for Hamilton Foundation.
- [E] A copy of the plat map for the subject property.
- [F] A copy of the Lease Agreement between Hamilton Foundation and the County.
- [G] A copy of the property record card for First Ave. Family Fun Center.
- [H] A copy of the property record card for Bob Walther Driving Range.

6. At the hearing, each party requested additional time to submit Responsive and Reply briefs. The briefs were submitted timely by both parties and are labeled Respondent's Exhibit I and Petitioner's Exhibit H respectively.

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

- [A] Form 132 with the following attachments:

Power of Attorney
Notice of Disapproval of Exemption
Exemption Memorandum
Form 136
Property Record Card

- [B] Notice of Hearing
- [C] Power of Attorney for Gene Brooks
- [D] Request for Additional Evidence

Jurisdictional Framework

8. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

State Review and Petitioner's Burden

9. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
10. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
11. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
12. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory

statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

13. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case.' See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Constitutional and Statutory Basis for Exemption

14. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.
15. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
16. In Indiana, 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. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996) (501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the

property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

17. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
18. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).
19. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* (NAME), 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
20. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 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 1990)).
21. 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 statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

22. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), the taxpayer must demonstrate that it provides “a present benefit to the general public...sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E. 2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff’d* 571 N.E. 2d (Ind. Tax 1991)).

Discussion of Issue

ISSUE 1: *Whether the golf course constructed and operated by the Bob Hamilton Charitable Golf Foundation, Inc.(Foundation) qualifies for exempt from property taxation.*

23. The Petitioner contends there are five (5) basis for allowing the exemption:
- a. Court Order. The 1977 court decision exempting the Foundation from property taxation must stand and be recognized as a precedent.
 - b. Charitable Foundation. The Foundation is providing a service the county would otherwise provide, at no cost to the taxpayers.
 - c. Language of agreement with County. There is no mention of taxes for the foundation because no taxes were contemplated by the parties.
 - d. Uniformity. Other golf courses have entered into leasing agreements with local governments, and there are not taxes on the greens.
 - e. Merger of personality into realty. Once an improvement is attached to the real estate in such a way that its removal would necessitate doing substantial harm to the real estate, then such improvement becomes part of the real estate.
24. The Respondent contends the following:
- a. The Petitioner failed to provide solid probative evidence to meet its burden.
 - b. The Petitioner presented no evidence to show that the property is used for the “relief of human want” as required by *NAME*, 671 N.E. 2d 218 (Ind. Tax 1996).
 - c. The court decision was based on certain facts that no longer apply.

- d. The use of the property is the controlling factor. The property used by a private entity for the purpose of profit-making recreation, not a municipal service or for relief of human want.

25. The applicable rules governing this Issue are:

Ind. Code § 6-1.1-10-4

Except as otherwise provided by law, the property owned by a political subdivision of the state is exempt from property taxation.

Ind. Code § 6-1.1-10-5

- (a) Property is exempt from property taxation if it is owned by a city or town and is used to provide a municipal service.
- (b) For purposes of this section, property used to provide a municipal service includes:
 - (1) a public school or library;
 - (2) a municipally owned park, golf course, playground, swimming pool, hospital, waterworks, electric utility, gas or heating plant, sewage treatment or disposal plant, cemetery, auditorium, or gymnasium; and
 - (3) any other municipally owned property, utility, or institution.

26. Evidence and testimony considered particularly relevant to this determination include the following:

- a. The land is a 220 acre tract of land owned by Vanderburgh county. The Foundation leases 213 acres, and the remaining 7 acres are leased to Robert Hamilton individually.
- b. The Foundation was organized on July 9, 1971, as a charitable foundation under Chapter 246, Acts of 1921 for the purpose of providing certain golf facilities for public use.
- c. The articles of incorporation (*Petitioner's Ex. D*) state in pertinent part:

Therefore, this corporation is organized for education and charitable purposes, and in pursuance thereof, to purchase or lease real property, including surplus real property owned by the County of Vanderburgh State of Indiana, in order to construct, maintain and operate superior golf facilities for the use and enjoyment of the general public, regardless of sex, race, color, religion or creed, at a reasonable user's fee which would not be restrictive, in order to provide benefits derived therefrom (after the repayment of any indebtedness that is incurred in constructing and establishing such golf facilities, together with the cost of operation and maintenance thereof), to be used for educational or charitable

purposes in furtherance of the purposes set out herein, including, but not in limitation thereof, college golf scholarships, college caddy scholarships, establishing free golf instruction programs for young people, and lending assistance and financial aid to the establishment, construction and operation of needed additional public golf facilities. The cost of all improvements, together with the cost of operation and maintenance, shall be paid exclusively by this corporation, and all leasehold improvements made on leased public real estate shall become the absolute property of the owner of the real estate at the termination of such lease.

- d. In September 1971, the Foundation and Bob Hamilton entered into an agreement with the Vanderburgh County Board of Commissioners. The relevant parts of the agreement (*Petitioner's Ex. B*) with the Foundation are as follows:
1. The real estate is leased for the sole and exclusive purpose of constructing, operating and maintaining 36 holes of golf and 2 practice greens, with fully watered fairways, greens and tees. There are specific requirements for the design of the golf courses. *Paragraph 1 & 2.*
 2. The Foundation agrees to pay \$600 annual rental. *Paragraph 5.*
 3. The golf courses are for use by the entire general public on a non-discriminatory basis, without any membership list or membership charge of any kind, regardless of race, color, creed, religion, sex or age, subject only to reasonable regulations common and customary with public and municipal golf courses. *Paragraph 10.*
 4. The hours and fees are specifically tied to the municipal golf courses in Evansville, Indiana. *Paragraph 10.*
 5. All improvements and additions made to the real estate shall become the sole and exclusive property of the lessor (county) at the termination of the lease. *Paragraph 18.*
- e. The Foundation filed an Application for Property Tax Exemption in 1974 and 1975, claiming exemption for the 213 acre tract together with thirty-eight (38) golf greens and a maintenance building. The Vanderburgh County Board of Review denied the application for exemption for both years. The Foundation appealed to the State Board of Tax Commissioners for both years. The Board denied the applications for exemption. The Foundation appealed to the Vanderburgh County Superior Court.

The court found the property of the Foundation to be exempt from property tax.

Petitioner's Ex. E.

- f. The subject property was exempt from property taxation until 1996 when the County Board of Review denied the application for exemption.
- g. The Foundation is not requesting an exemption for the clubhouse, restaurant, and parking area. These improvements are on the property leased to Bob Hamilton individually. The lease agreement with Bob Hamilton, and the improvements to the seven (7) acres leased the Bob Hamilton are not a part of this appeal.

Analysis of ISSUE 1

- 27. The agreement between the Foundation and the Board of Commissioners is a lease in technical terms, but in practical terms it provides the county with a golf course at no expense to the county. The terms of the lease require the Foundation to build and maintain a golf course to the county specifications, fees and hours of operations are dictated by the agreement, and at the end of the lease, the county owns the golf course.
- 28. The Foundation was specifically formed for the purpose of constructing and maintaining the golf course at a reasonable user's fee. The benefits derived from the fees (after the payment of construction debt, and the cost of operation and maintenance) is to be used for educational or charitable purposes.
- 29. For all practical purposes the golf course is owned and operated by the county. The land is owned by the county, the county dictates the operation of the golf course, and upon termination of the lease all improvements made to the land become the property of the county.

Summary of Final Determination

Determination of ISSUE 1: *Whether the golf course constructed and operated by the Bob Hamilton Charitable Golf Foundation, Inc.(Foundation) qualifies for exempt from property taxation.*

30. The golf course (36 holes plus 2 practice holes) and maintenance building located on the 213 acre tract of land owned by the county and leased to the Foundation is exempt from property taxation.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, 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.