

REPRESENTATIVES FOR PETITIONER: Bowers, Harrison, Kent and Miller
Mr. Timothy J. Hubert
Mr. Cedric Hustace

REPRESENTATIVES FOR RESPONDENT: Cheryl Musgrave
Khris Seger

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

Catholic Diocese of Evansville,)	Petition Nos.: 82-029-96-2-8-00075*
)	82-029-96-2-8-00072
)	
Petitioner)	County: Vanderburgh
)	
v.)	Township: Pigeon
)	
Vanderburgh County Board of)	Parcel No.: 56071036
Review,)	570712410
)	
Respondent)	Assessment Year: 1996

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

[DATE OF ISSUANCE]

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 petition numbers have been updated. The original petition numbers were 95-822-75 & 95-822-72 respectively.

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 is:
Whether the real property owned by the Catholic Diocese of Evansville qualifies for property tax exemption pursuant to Ind. Code §§ 6-1.1-10-16 and/or 6-1.1-10-33.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-3, the Catholic Diocese of Evansville (Petitioner) filed Applications for Property Tax Exemption, Form 136, with the Vanderburgh County Auditor. The Form 136 applications were filed on May 14, 1996. The Vanderburgh County Board of Review (County Board) denied the applications and gave the Petitioner notice on March 27, 1997.
3. Pursuant to Ind. Code § 6-1.1-11-7, Mr. Timothy J. Hubert with Bowers, Harrison, Kent and Miller, filed Form 132, Petitions for Review of Exemption, on behalf of the Catholic Diocese of Evansville, petitioning the Board to conduct an administrative review of the above petitions.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on March 31, 1998 before Hearing Officer Kim Chattin.
5. The following persons were present at the hearing:

For the Petitioner:

Mr. Timothy J. Hubert, Bowers, Harrison, Kent and Miller

Mr. Cedric Hustace, Bowers, Harrison, Kent and Miller

For the Respondent:

Ms. Cheryl Musgrave, Vanderburgh County Assessor

Mr. Khris Seger,

6. The hearing held on March 31, 1998, covered a total of seventeen (17) petitions. The Petitioner submitted a total of forty-eight (48) exhibits and the Respondent submitted a total of four (4) exhibits. Only the testimony and exhibits relevant to these petitions will be addressed in these findings.
7. At the hearing, the subject Form 131 petitions were made a part of the record and labeled Board Exhibit A. The Notices of Hearing were made a part of the record as Board Exhibit B. In addition, the following exhibits were submitted to the Board:

Petitioner's Exhibit 1 – A letter from the Internal Revenue Service (IRS) dated July 18, 1997 regarding 501(c)(3) status for the Petitioner.

Petitioner's Exhibit 2 – A letter from the IRS dated July 25, 1997 regarding an IRS group ruling for Catholic organizations.

Petitioner's Exhibit 3 – Portions of the March 6, 1997 Vanderburgh County Board of Review minutes.

Petitioner's Exhibit 4 – Portions of the April 3, 1997 Vanderburgh County Board of Review minutes.

Petitioner's Exhibit 5 – A copy of *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954 (Ind. Tax 1997).

Petitioner's Exhibit 6 – A copy of a document containing a discussion of “Doctrinal Objections” (exception for filing Form 136) and “Predominant Use Test” (predominate use for religious purposes).

Petitioner's Exhibit 7 – *The Yearbook of the Catholic Diocese of Evansville, 1996 Edition*.

Petitioner's Exhibit 32 – Petitioner's brief for Parcel 05-060-07-103-006

Petitioner's Exhibit 33 – An affidavit from Rev. Msgr. Kenneth R. Knapp regarding property owned by the Catholic Diocese of Evansville.

Petitioner's Exhibit 34 – Warranty Deed from Francis R. Shea, Bishop of the Catholic Diocese of Evansville to Franciscan Monastery of St. Clare.

Petitioner's Exhibit 35 – Warranty Deed from Gerald Gettelfinger to Franciscan Monastery of St. Clare.

Petitioner's Exhibit 36 – Letter dated August 5, 1990 to Bishop Gettelfinger from Sister Mary Martha Blandford.

Petitioner's Exhibit 37 – Letter dated May 22, 1991 to Sister Anna Scheessele from Gerald Gettelfinger.

Petitioner's Exhibit 38 – Petitioner's brief for 05-070-07-124-010.

Respondent's Exhibit 3 – A memo from Cheryl Musgrave to Kimberly Chattin regarding Petition Nos. 95-822-75, 95-822-72, and 95-822-85.

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

Whether the real property owned by the Catholic Diocese of Evansville qualifies for property tax exemption pursuant to Ind. Code §§ 6-1.1-10-16 and/or 6-1.1-10-33.

23. The Petitioner contends the property is held in trust until the intended purpose, using the site for a Catholic church or Newman Center, can be fulfilled.
24. The Respondent contends that Ind. Code § 6-1.1-10-16 states that the applicant must demonstrate within a three year period, their intent to construct an exempt building. The Petitioner has not demonstrated the intent to construct an exempt building.
25. The applicable rules governing this Issue are:

Ind. Code § 6-1.1-10-16(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, or charitable purposes.

Ind. Code § 6-1.1-10-16(d)

(d) A tract of land is exempt from property taxation if:

(1) it is purchased for the purpose of erecting a building which is to be owned, occupied, and used in such a manner that the building will be exempt under subsection (a) or (b);

(2) the tract does not exceed:

(A) one hundred fifty (150) acres in the case of:

(i) an educational institution; or

(ii) a tract that was exempt under this subsection on March 1, 1987;

(B) two hundred (200) acres in the case of a local association formed for the purpose of promoting 4-H programs; or

(C) fifteen (15) acres in all other cases; and

(3) not more than three (3) years after the property is purchased, and for each year after the three (3) year period, the owner demonstrates substantial progress towards the erection of the intended building and use of the tract for the exempt purpose. To establish that substantial progress is being made, the owner must prove the existence of factors such as the following:

(A) Organization of and activity by a building committee or other oversight group.

(B) Completion and filing of building plans with the appropriate local government authority.

(C) Cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin within three (3) years.

(D) The breaking of ground and the beginning of actual construction.

(E) Any other factor that would lead a reasonable individual to believe that construction of the building is an active plan and that the building is capable of being completed within six (6) years considering the circumstances of the owner.

Ind. Code § 6-1.1-10-33

(a) Tangible property which is under the control of an executor or a trustee is exempt from property taxation if it is to be used and applied:

(1) within this state for a municipal, educational, literary, scientific, religious, or charitable purpose; or

(2) for the benefit of this state or a state institution.

(b) Subsection (a) does not apply unless the executor or trustee diligently and in good faith carries out the provisions of the will or trust agreement by using and applying the property for the intended purpose.

26. The real property subject to this appeal are two parcels of vacant land. The property for petition number 82-029-96-2-8-00075 is located on Strueh-Hendricks Road, Evansville, Perry Township, Vanderburgh County. The property for petition number 82-029-96-2-8-00072 is located on Nurrenbern Road, Evansville, Perry Township, Vanderburgh County.

The assessment year for which exemption is sought is 1996 with property taxes due and payable in 1997. The Hearing Officer did not view the subject properties.

27. In August 1966, Mary E. Nurrenbern by warranty deed, donated property to the Petitioner. The grantor, Mary E. Nurrenbern, placed specific restrictions upon the conveyance of the property. The property was to be used for construction of a Newman Center or a west side Catholic parish church with auxiliary buildings, but be held and kept intact insofar as possible (with timber to be left uncut) until said permanent use became feasible. (Petitioner's Ex. 33)
28. In December 1966, the Petitioner conveyed approximately 200 acres to Southern Indiana Higher Education, Inc., for construction and development of what is now University of Southern Indiana (USI). The Petitioner reserved sufficient acreage for construction of a Newman Center or church with auxiliary buildings. At the request of USI, the Petitioner has swapped the acreage it reserved with USI so that the university could continue to develop its campus and programs. (Petitioner's Ex. 33)
29. The subject properties are part of the original Nurrenbern property conveyed to the Petitioner in 1966. (Petitioner's Ex. 33)
30. The Petitioner allows USI and the Franciscan Sisters of the Monastery of St. Clare to utilize the properties for educational and religious purposes. (Petitioner's Ex. 33)
31. The Petitioner considers itself to be a trustee of the properties remaining from the original Nurrenbern conveyance until such time as it can carry out the intended purposes for which the properties were donated. (Petitioner's Ex. 33)

Analysis of Issue

32. The property was conveyed to the Petitioner in 1966. The year of the appeal is 1996, thirty (30) years after the Petitioner originally received the property. The property is vacant. USI and the Franciscan Sisters of the Monastery of St. Clare are allowed to use

the property. The Petitioner provided no testimony or documentation with regard to the intended use of the property for construction of a church or a Newman Center.

33. Ind. Code § 6-1.1-10-16(d)(3) requires that not more than three (3) years after the property is purchased, the owner demonstrate substantial progress towards the erection of the intended buildings and use of the tract for the exempt purpose.
34. Ind. Code § 6-1.1-10-33 requires the executor or trustee to diligently and in good faith carry out the provisions of the will or trust agreement by using and applying the property for the intended purpose.
35. The Petitioner has not demonstrated substantial progress toward the construction of a church or Newman Center. Nor has the Petitioner provided evidence to show progress or any reasonable expectation that the construction will take place in the foreseeable future.
36. The Petitioner has failed to meet its burden of proving that the property is entitled to the exemption within the statute under which the exemption is being claimed.

Summary of Final Determination

Whether the real property owned by the Catholic Diocese of Evansville qualifies for property tax exemption pursuant to Ind. Code §§ 6-1.1-10-16 and/or 6-1.1-10-33.

37. The Petitioner has failed to meet its burden. Therefore, the exemption is denied and the subject property is 100% taxable.

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.