

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 No.: 82-029-96-2-8-00085*
)	
Petitioner)	County: Vanderburgh
)	
v.)	Township: Pigeon
)	
Vanderburgh County Board of)	Parcel No.: 11570286011
Review,)	
)	
Respondent)	Assessment Year: 1996

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

May 21, 2003

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 number has been updated. The original petition number was 95-822-85.

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.

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 39 – An affidavit from Rev. Raymond A. Brenner regarding the property located at 1528 Keller Avenue.

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.

23. The Petitioner contends the property is a public benefit because the Petitioner is maintaining the property instead of abandoning it to the county.
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) states:**

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) states in part:**

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);
26. The real property subject to this appeal is a vacant lot located at 1528 Keller Avenue, Evansville, Pigeon 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 property.

27. The subject property was conveyed to the Petitioner on September 4, 1990, by warranty deed from Helen Caldemeyer Rettinger, Lloyd O. Caldemeyer, and Daniel F. Caldemeyer. (Petitioner's Ex. 39).
28. The subject property is of little use or benefit to the Petitioner due to its location, size and physical characteristics. The Petitioner has engaged in continuous efforts to sell or dispose of the subject property. The Petitioner offered to donate the subject property to Habitat for Humanity and Habitat for Humanity refused it. The subject property has never generated any income, but has served as a liability to the Petitioner. (Testimony of Petitioner and Petitioner's Ex. 39).
29. The Petitioner discussed *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850 (Ind. Tax 1990). The Petitioner stated that this case supports the public policy argument for exemption saying should be granted when there is an expectation of public benefit from the exemption. The property in question is a public benefit because the Petitioner is maintaining the property instead of abandoning it to the county.
30. The Respondent referenced the *Foursquare Tabernacle Church* court case stating that the public does not receive any benefit from property that is not being used or taxed.

Analysis of Issue

31. Ind. Code § 6-1.1-10-16(d) provides an exemption for a tract of land, if the land was purchased for the purpose of erecting a building which will be owned, occupied, and used such that it would be exempt.
32. The evidence is clear, the Petitioner has no plans for building on the subject property. In fact, the Petitioner has made efforts to dispose of the property.

33. The Petitioner has the burden to show that the subject property falls specifically within the statute under which exemption is being claimed. The Petitioner has failed to meet its burden. Therefore, the exemption is denied and the subject property is 100% taxable.

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.

34. 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.