

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.: 82-029-96-2-8-00087*
)	
Petitioner)	County: Vanderburgh
)	
v.)	Township: Pigeon
)	
Vanderburgh County Board of)	Parcel No.: 1118023121
Review,)	
)	
Respondent)	Assessment Year: 1996

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

July 17, 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 95-822-87.

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 29 – Petitioner's Brief for Parcel 11-180-23-012-001.

Petitioner's Exhibit 30 – An affidavit from Sr. Jane Nesmith regarding the property located at 613 Bellemeade Avenue.

Petitioner's Exhibit 31 – A copy of a letter dated August 12, 1996 to Ken Krasavage from Rev. Earl Rohleder regarding the property located at 613 Bellemeade Avenue.

Respondent's Exhibit 2 – A memo from Cheryl Musgrave to Kimberly Chattin regarding Petition No. 95-822-87.

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 that the property is used for charitable or religious purposes and should be exempt. The Petitioner believes the act of renting the property to a financially needy community family for an affordable value is a charitable act. The Petitioner believes that since the income received is committed to the church purposes, the property’s use is religious as well. The subject property is serving to fulfill a part of the Petitioner’s outreach program.
24. The Respondent granted an exemption of 50% for the portion of the property used as parish storage. The Respondent contends the remaining part of the property is not occupied by the church and is used as rental property. The rented portion of the property is not used in a religious or charitable manner.
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.
26. The real property subject to this appeal is a residential dwelling located at 613 Bellemeade 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 formerly the parish convent used to house the Benedictine nuns assigned to the parish to teach in the parochial elementary school. (Petitioner's Ex. 29) The subject property is now used as rental housing and storage. The portion of the subject property that is currently rented consists of a four bedroom, one and a half bath apartment. This represents approximately one-half of the subject property. (Petitioner's Ex. 29, 30, and 31.)
28. The Petitioner rents the subject property to needy families as part of its outreach program. (Petitioner's Ex. 29) The Petitioner furnishes the appliances and pays the utilities. The Petitioner charges its tenants \$300.00 per month rent. (Petitioner's Ex. 29, 30, and 31.)
29. All rental income is used to defray the expense for the upkeep of the parish. The Petitioner does not realize any profit from the renting of the subject property. (Petitioner's Ex. 29 and 30.)
30. The Petitioner cites to *State Board of Tax Commissioners v. Warner Press, Inc.*, 248 N.E. 2d 405 (Ind. App. 1969), *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954 (Ind. Tax 1997) and *State Board of Tax Commissioners v. Methodist Home for the Aged*, 241 N.E. 2d 84 (Ind. App. 1968) in support of its position. (Petitioner's Ex. 29).
31. The County Board granted an exemption for the portion of the property used as parish storage. The County Board stated that the remaining portion of the property is used as rental property.

Analysis of Issue

32. When an exempt entity rents its property to a party that would not be exempt, the exemption must be scrutinized. However, this alone does not mean the property is

deprived property tax exemption. The focus must turn to the use of the property (and its income) and the motivation of the exempt entity. Income derived from the use of property does not necessarily negate the exemption, depending on the type and use of the income, how the exempt purpose is furthered, and whether there is a motivation to profit. *State Board of Tax Commissioners v. Methodist Home of the Aged*, 241 N.E. 2d 84 (Ind. App. 1968). Another question that must be considered is whether the property is reasonably necessary for the furtherance of an exempt purpose. *LeSea Broadcasting Corp. v. State Board of Tax Commissioners*, 525 N.E. 2d 637 (Ind. Tax 1988).

33. Therefore, to qualify for property tax exemption, the Petitioner must show that the subject property is reasonably necessary for the furtherance of its religious purpose. The Petitioner must show that the use of the subject property furthers its religious purpose and that it is used without any motivation of profit.

34. The evidence demonstrates that the Petitioner uses the subject property to carry out its outreach program in the community. The Petitioner carries this out by making the subject property available for housing, at below market rates, to the less fortunate families in the area. The rental income received by the Petitioner does not negate the exempt nature of the use of the subject property as it is used to defray the cost of upkeep on the premises. It is clear that profit is not the motivation behind the renting of the subject property. Again, the Petitioner uses the income to reduce the cost of maintenance. Also, the Petitioner provides the appliances for the subject property and the Petitioner pays all utilities. Logically, if profit were the motivating factor, the Petitioner would not charge a rent below market rate while providing all the appliances and paying the utilities.

Summary of Final Determination

Determination 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.*

35. The Petitioner has met its burden of showing that the subject property is reasonably necessary for the furtherance of its religious and charitable purposes and the subject property is wholly 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.