

REPRESENTATIVE FOR PETITIONER:

Philip C. Thrasher, Thrasher, Buschmann, Griffith & Voelkel, P.C.

REPRESENTATIVES FOR RESPONDENT:

Marilyn S. Meighen, Meighen & Associates P.C.

Mark A. Thiros, Cohen and Thiros

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Cesare Battisti Club No. 27,	)	Petition No.:	45-036-02-2-8-00005
	)		
Petitioner,	)	Parcel No.:	201304470033 and
	)		Personal Property
v.	)		
	)	County:	Lake
Lake County Property Tax	)	Township:	St. John
Assessment Board of Appeals,	)		
	)	Assessment Year:	2002
Respondent.	)		

Appeal from the Final Determination of  
Lake Property Tax Assessment Board of Appeals

**September 1, 2009**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (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 Petitioner's real and personal property is exempt from taxation pursuant Indiana Codes § 6-1.1-10-16 and § 6-1.1-10-36.3 because its property is predominantly used for educational, fraternal and charitable purposes.<sup>1</sup>

### **Procedural History**

2. Mr. Gino Baldin, on behalf of Cesare Battisti Club No. 27, (Cesare Battisti) filed a Form 136 Application for Property Tax Exemption with the Lake County Property Tax Assessment Board of Appeals (PTABOA) on May 14, 2002. The Lake County PTABOA issued its determination denying the exemptions on April 6, 2006. On May 8, 2006, the Petitioner's representative, Mr. Thrasher, filed a Form 132 Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition.<sup>2</sup>

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Indiana Code § 6-1.1-15-4, Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on December 9, 2008, in Crown Point, Indiana.

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<sup>1</sup> The Petitioner's application for exemption sought an exemption pursuant to Ind. Code § 6-1.1-10-23 for a fraternal benefit association. On November 16, 2007, the Petitioner's representative filed an amended petition with the Board, wherein the Petitioner added a claim for exemption under Ind. Code § 6-1.1-10-16 for its educational, fraternal and charitable activities. At the hearing, Mr. Thrasher admitted that the Petitioner does not meet the criteria set forth by Ind. Code § 6-1.1-10-23 for a fraternal benefit association and withdrew the claim for exemption under Ind. Code § 6-1.1-10-23.

<sup>2</sup> At the hearing, the parties by stipulation agreed that the Petitioner's Form 132 Petition for Review of Exemption was timely filed to the Indiana Board of Tax Review.

4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Gino G. Baldin, Cesare Battisti building manager  
Phil Biancardi, Cesare Battisti trustee  
Anthony R. Basso, Cesare Battisti past president

For the Respondent:<sup>3</sup>

Joshua D. Pettit, Nexus Group  
Hank Adams, St. John Township Assessor

5. The Petitioner submitted the following exhibits:<sup>4</sup>

Petitioner Exhibit A – Affidavit of Gino Baldin, dated November 26, 2008,  
Petitioner Exhibit 1 – Cesare Battisti’s Trustee’s Reports from January 1, 2000, through December 31, 2001,  
Petitioner Exhibit 2 – Cesare Battisti’s donations from February 9, 2000, through March 13, 2002,  
Petitioner Exhibit 3 – Donation acknowledgements from February 12, 2000, through February 24, 2003,  
Petitioner Exhibit 4 – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132, Power of Attorney, dated April 29, 2006, Notice of Appearance by Philip Thrasher, Villa Cesare’s room usage totals for 2000 and 2001, the 2000 and 2001 Not-for-Profit/Profit Building Reports, Application for Property Tax Exemption – Form 136, Cesare Battisti’s property record card, additional information regarding Cesare Battisti’s purpose, Cesare Battisti’s 2000 and 2001 donation

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<sup>3</sup> Ms. Terryl Bish, Ms. Wilma Wright and Ms. Carol-Ann Seaton were also in attendance for the Respondent but were not sworn in as witnesses to give testimony.

<sup>4</sup> At the hearing, Mr. Thrasher indicated a number of the Petitioner’s exhibits should be kept confidential. Mr. Thrasher was given until February 6, 2009, to comply with the Board’s procedural rule 52 IAC 2-7-5, which states “a party must, at the time it is submitted, clearly identify all confidential information provided to the Board and specify the statutory basis under which the information is claimed to be confidential.” On February 3, 2009, Mr. Thrasher withdrew his request that the Petitioner’s Exhibits be kept confidential.

- list, and Notice of Action of Exemption Application – Form 120,
- Petitioner Exhibit 5 – First Amendment of Petition to the Indiana Board of Tax Review for Review of Exemption, dated November 16, 2007,
- Petitioner Exhibit 6 – Cesare Battisti’s Bylaws, dated August 11, 1998,
- Petitioner Exhibit 7 – Cesare Battisti’s Certificate of Incorporation and Articles of Incorporation, dated September 29, 1944,
- Petitioner Exhibit 8 – Letter from the Treasury Department, Commissioner of Internal Revenue to Cesare Battisti, dated May 3, 1946,
- Petitioner Exhibit 9 – 2000 Return of Organization Exempt from Income Tax – Form 990 and Depreciation and Amortization – Form 4562,
- Petitioner Exhibit 10 – 2001 Return of Organization Exempt from Income Tax – Form 990,
- Petitioner Exhibit 11 – Villa Cesare’s event contracts from January 22, 2000, through February 24, 2002,
- Petitioner Exhibit 12 – Cesare Battisti’s calendar from January 2000, through February 2002,
- Petitioner Exhibit 13 – Cesare Battisti’s newsletters from February 2000, through December 2001,
- Petitioner Exhibit 14 – Villa Cesare’s floor plans, dated April 4, 1988,
- Petitioner Exhibit 15 – Interior and exterior photographs of Cesare Battisti, dated November 20, 2008,
- Petitioner Exhibit 16 – Area calculations of Villa Cesare rooms,
- Petitioner Exhibit 17 – Area allocations per use for Villa Cesare,
- Petitioner Exhibit 18 – Villa Cesare room use schedule from March 1, 2000 through February 28, 2002,
- Petitioner Exhibit 19 – Indiana Code § 6-1.1-10-16,
- Petitioner Exhibit 20 – Indiana Code § 6-1.1-10-36.3,
- Petitioner Exhibit 21 – *Plainfield Elks Lodge No. 2186 v. State Board of Tax Commissioners*, 733 N.E.2d 32 (Ind. Tax Ct. 2000),
- Petitioner Exhibit 22 – Indiana Board of Tax Review Final Determination in *American Legion Post #82 v. Allen County Property Tax Assessment Board of Appeals*, Petition No. 02-073-04-2-8-00022A, dated January 17, 2007,
- Petitioner Exhibit 23 – *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005),

- Petitioner Exhibit 24 – *Raintree Friends Housing, Inc. v. Indiana Department of State Revenue*, 667 N.E.2d 810 (Ind. Tax Ct. 1996),
- Petitioner Exhibit 25 - *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905 (Ind. Tax Ct. 2006),
- Petitioner Exhibit 26 – *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004),
- Petitioner Exhibit 27 – *Indianapolis Elks Building Corporation v. State Board of Tax Commissioners*, 251 N.E. 2d 673 (Ind. Ct. App.1969),
- Petitioner Exhibit 28 – *New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E. 2d 36 (Ind. Tax Ct. 2000),
- Petitioner Exhibit 29 – *Alte Salems Kirche, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 40 (Ind. Tax Ct. 2000),
- Petitioner Exhibit 30 – *Department of Local Government Finance v. Roller Skating Rink Operators Association*, 853 N.E. 2d 1262 (Ind. 2006),
- Petitioner Exhibit 31 – *Trinity School of Natural Health, Inc. v. Kosciusko County Property Tax Assessment Board of Appeals*, 799 N.E.2d 1234 (Ind. Tax Ct. 2003),
- Petitioner Exhibit 32 – *Indiana Board of Tax Review Final Determination in American Legion Post #6 v. Howard County Property Tax Assessment Board of Appeals*, Petition No. 34-002-04-2-8-00002, dated September 13, 2007,
- Petitioner Exhibit 33 – *State Board of Tax Commissioners v. Methodist Home for Aged of Indiana Conference*, 241 N.E.2d 84 (Ind. Ct. App. 1968)
- Petitioner Exhibit 34 – *Indiana Board of Tax Review Final Determination in Beta Nu Chapter – Phi Delta Kappa v. Howard County Property Tax Assessment Board of Appeals*, Petition No. 34-002-04-2-8-00001, dated October 30, 2006.

6. The Respondent’s counsel objected to the Petitioner’s Trustee’s Reports, Donation Reports, Organization Donation Acknowledgements, 2000 Return of Organization Exempt for Income Tax – Form 990 and Depreciation and Amortization – Form 4562, Villa Cesare event contracts, Cesare Battisti calendar and Villa Cesare room use schedule to the extent that the documents covered a

period prior to March 1, 2001, on the basis that the relevant time period for the Petitioner’s appeal is March 1, 2001 to March 1, 2002. *Petitioner Exhibits 1, 2, 3, 9, 11, 12 and 18*. The Indiana Tax Court, however, held that “[e]vidence of events occurring in other tax years should be considered if relevant to a fact existing during the tax year.” *Alte Salems Kirche, Inc. v. State Board of Tax Review*, 699 N.E.2d 810, 814 (Ind. Tax Ct. 1998). This principle is “particularly true in cases where property is claimed to be exempt under section 6-1.1-10-16 . . . [and where] the central question is the purpose for which the property is being used . . . [as evidence of] [e]vents occurring outside of the tax year at issue may shed a great deal of light on the purpose for which the property is used during that tax year.” *Id.* at 814. Thus, the Petitioner’s evidence of events prior to March 1, 2001, has some relevancy to the question of its use of the property and therefore are admitted.

7. The Respondent submitted the following exhibits:<sup>5</sup>

- Respondent Exhibit R-1 – Respondent’s facility use calculation,
- Respondent Exhibit R-2 – Petitioner’s 2001 Not-for-Profit/Profit Building Report,
- Respondent Exhibit R-3 – Petitioner’s 2002 Not-for Profit/Profit Building Report,
- Respondent Exhibit R-5 – Department of Local Government Finance memorandum dated April 17, 2002.

8. The Petitioner’s counsel made several objections to the admission of Respondent’s facility use schedule. *Respondent Exhibit R-1*. First, Mr. Thrasher argued that it is misleading because it omits data, the data used in the schedule is obsolete and the data is not based on facts in evidence. In addition, he objected to Mr. Pettit’s testimony regarding compiling and formatting the data contained in Respondent’s Exhibit R-1 because Mr. Pettit did not establish he is an expert or that he had first hand knowledge of the data compiled. In response, the

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<sup>5</sup> At the hearing, Ms. Meighen withdrew Respondent Exhibit R-4.

Respondent's counsel argued that the data was merely a compilation of information attached to the exemption application filed by the Petitioner, which was submitted as Petitioner's Exhibit 4. Further, Ms. Meighen noted that all Mr. Pettit did was take the data from Petitioner's Exhibit 4 and reformat it by month, day, room and number of hours used. The limited, general conclusion Mr. Pettit offered about the data used in Respondent's Exhibit R-1 does not require particular expertise. The Board over-rules the Petitioner's objection and admits the exhibit and related testimony.

9. The Petitioner's counsel also objected to Respondent's Exhibit 5, arguing that the Department of Local Government Finance's (DLGF) memorandum is not a rule, regulation or statute, therefore the Petitioner is not bound to conform to the memorandum. Ms. Meighen argued the DLGF memorandum was the legal opinion of Mr. Jon Laramore a DLGF Commissioner in 2002, who has also been regarded as a tax expert in the State of Indiana. While the DLGF memorandum may not have the full effect and force of statutes, rules or regulations, the DLGF is a governing body that regularly issues memorandums, bulletins and instructions for clarification and interpretation purposes to assist local officials. Therefore, the Board allows admission of Respondent's Exhibit 5.
  
10. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:
  - Board Exhibit A – Form 132 petition with attachments,
  - Board Exhibit B – Notice of Hearing on Petition,
  - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
  - Board Exhibit D – Hearing sign-in sheet.
  
11. The Petitioner submitted a post-hearing memorandum and proposed findings of facts and conclusions of law on January 14, 2009 (Petitioner's brief). The Respondent submitted its post-hearing brief on January 15, 2009 (Respondent's brief).

12. The property at issue is a lodge/banquet facility with a detached garage on 9.431 acres, located at 900 Eagle Ridge Road, Schererville, in St. John Township, Lake County.
13. The ALJ did not conduct an on-site inspection of the property.
14. For 2002, the PTABOA determined the real and personal property to be 100% taxable.
15. For 2002, the Petitioner contends that the real and personal property should be 83% tax-exempt.

### **Jurisdictional Framework**

16. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and 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 Petitioner's Burden**

17. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).



18. 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. Washington Township 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”).
19. 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 of Exemption and Burden**

20. 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.
21. 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).

22. 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)).
23. 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).

#### **Petitioner's Contentions**

24. The Petitioner contends that its real and personal property should be exempt under Ind. Codes § 6-1.1-10-16 and § 6-1.1-10-36.3 because the property is predominantly used for charitable, fraternal and educational purposes.
25. The Petitioner presented the following evidence in regard to this issue:
  - A. The Petitioner contends it is an Indiana non-profit corporation affiliated with the Italo-American National Union, Inc. *Thrasher argument; Baldin testimony; Petitioner Exhibits A and 7*. The Petitioner's Articles of Incorporation state that the Petitioner's purpose is to "create a better understanding of fellowship between Americans of Italian extraction; to participate and advance civic welfare; to teach higher ideals of citizenship; to band together for social purposes; to create sufficient funds to establish a home site for the meeting of its members to carry forth the purposes and

ideology of the corporation; to assist those who are needy and in distress, by voluntary contribution.” *Petitioner Exhibit 7*. According to the Petitioner’s counsel, the organization is also exempt under sections 101(3) and 501(c)(8) of the Internal Revenue Code. *Thrasher argument; Baldin testimony; Petitioner Exhibits A and 8*. In support of its contentions, the Petitioner submitted a letter from the Internal Revenue Service (IRS), its Certificate of Incorporation from the State of Indiana and Cesare Battisti’s By-laws. *Petitioner Exhibits 6 through 8*.

B. The Petitioner’s counsel argues that a charitable purpose is identified by obvious charitable acts by the Petitioner. *Thrasher argument; Petitioner brief at 21*. According to Mr. Thrasher, for acts to be charitable, there must be evidence of relief of human want; the acts must be different from the everyday purposes and activities of man in general; some or all of the relief must inure to the general public whether directly or by reason of relieving the public from providing it; and the amount of relief must be sufficient to justify the exemption from taxation. *Petitioner brief at 27-28*. The beneficiary of the charity, however, may be a person, destitute or not, a member of any identified class of individuals or entities, or simply the general public. *Id.* In support of its analysis, the Petitioner cites various statutes including Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-36.3. *Id. at 17-20; Petitioner Exhibits 19 and 20*. The Petitioner also cites several cases that it contends define a charitable purpose. *Petitioner’s brief at 27-28; Petitioner Exhibits 21 through 33*.

C. The Petitioner argues that the Indiana General Assembly has “singled out for special treatment” many organizations in Ind. Code § 6-1.1-10-25, such as Knights of Columbus, American Legion, and Boy Scouts of America for tax exemption, with no requirement that they perform any acts other than those that are expected of them according to their stated charters. *Thrasher*

*argument; Petitioner's brief at 19-21.* According to the Petitioner, these “miscellaneous organizations” are completely exempt even if their property is used for administrative and social functions. *Id.* Mr. Thrasher argues that although the Petitioner is not an identified “miscellaneous organization” under Ind. Code § 6-1.1-10-25, the Petitioner has many of the same characteristics as the statutorily exempt organizations. *Id.* According to the Petitioner’s counsel, the Petitioner represents largely the same demographics, its members are also members of the miscellaneous organizations, and in many cases it contributes more to charitable endeavors in the local community than the exempt organizations. *Id.*

- D. The Petitioner’s witness, Mr. Baldin, testified that the property under appeal contains a main building known as Villa Cesare (the Villa), a gazebo, a garage, and on-site asphalt parking. *Baldwin testimony; Petitioner Exhibit A.* According to Mr. Baldin, the Villa contains several rooms, including a lobby, an office, office storage, a small corridor, small restrooms, a grill kitchen, large restrooms, a cloak room, the Palermo room, the Roma room, the Venezia room, and a large kitchen. *Id.*
- E. The Petitioner contends the property is primarily used in the ordinary course of the Petitioner’s business. *Thrasher argument.* According to the Petitioner’s counsel, the offices are used for Cesare Battisti’s affairs, general business, building management, storage and direct charitable activities. *Thrasher argument.* In addition, the Villa is used by various member groups to conduct meetings, which might address general lodge business, or may have more specific purposes such as awarding sick relief to members, scholarships to member’s children or to plan social and fundraising events for members. *Baldin testimony; Petitioner Exhibits A and 18.* The property is also used to host member events such as weddings, bridal showers, baby showers, anniversaries, family gatherings, graduation parties and funeral

meals. *Id.* Further, special all-member events take place on the property including Easter celebrations, Mother's Day brunches, St. Patrick's and St. Joseph's Day parties, all-member picnics, Halloween events, New Year's Eve parties, and Super Bowl parties. *Id.* The Petitioner argues that all activities related to Cesare Battisti, its lodge, and its members are exempt because they are charitable activities. *Thrasher argument.*

F. The Petitioner also argues that Cesare Battisti uses the facility for educational purposes. *Baldin testimony; Petitioner Exhibits A and 18.* The Petitioner's witness, Mr. Baldin, testified that Italian classes are offered approximately once a week for three hours. *Baldin testimony; Petitioner Exhibits A and 18.* According to Mr. Baldin, the class is open to anyone interested in learning to speak Italian. *Baldin testimony.* Thus, the Petitioner argues, it is providing a public benefit. *Thrasher argument.*

G. In addition, the Villa is used by third-party users for various events. *Thrasher argument; Baldin testimony; Petitioner Exhibits A and 18.* The Petitioner rents its facilities for commercial entities to host business dinners, conferences and trade shows. *Petitioner's brief at 45; Petitioner Exhibit 18.* Families rent the Villa for special events such as weddings, bridal showers, baby showers, anniversaries, family gatherings, graduation parties and funeral meals. *Id.* The facilities are also available for charitable and tax-exempt organizations. *Id.* According to Mr. Baldin, the Villa charges reduced room rental fees and food and beverage costs to tax-exempt organizations, such as Mended Hearts, St. Edwards Church, the Cub Scouts and Lake Central High School for fundraising events. *Baldin testimony; Petitioner's Exhibits 3, 11, 12 and 18.* The facilities are also made available to religious organizations at no charge. *Petitioner's brief at 44.*

H. The Petitioner's counsel calculated its exempt use by designating various activities as charitable and educational and allocating areas of the building

and hours of occupancy to that activity. *Thrasher argument; Petitioner Exhibits 16 through 18.* The Petitioner’s counsel argues that the offices, garage, and storage rooms are “occupied” 24 hours a day for the Petitioner’s purposes and therefore Mr. Thrasher allocated that area 24 hours a day/365 days a year as exempt. *Thrasher argument; Petitioner Exhibit 18; Petitioner’s brief at 35 through 42.* The Petitioner’s counsel allocated the area of the Grill Kitchen, the “small corridor” and the “small restrooms” to the administrative staff unless there was an event in the Palermo Room. *Id.* The “large restroom and cloakroom” and “main kitchen” were allocated to the user of the Roma Room or Venezia Rooms. *Id.* The Lobby area was allocated between all users of the property. *Id.* Based on this calculation, the Petitioner determined that the facility was used for 77,160,393 sq.ft./hrs. for charitable or educational use and 15,639,295 sq.ft./hrs. for non-exempt uses. *Petitioner Exhibit 18.* Thus, the Petitioner argues, from March 1, 2000, to February 28, 2001, 83.145% of the activities at the Villa were educational and charitable and therefore the property should be granted an 83% exemption. *Thrasher argument; Petitioner Exhibit 18.*<sup>6</sup>

- I. Finally, the Petitioner argues that it makes regular donations to various charitable organizations. *Biancardi and Baldin testimony; Petitioner Exhibit 2.* In support of this contention, the Petitioner submitted a donation report and donation acknowledgements listing charitable donations for February 2000 through February 2002. *Id.* For 2000, the Petitioner contends it donated a total of \$104,787.<sup>7</sup> *Petitioner’s brief at 32.* According to the Petitioner, the contributions in 2000 represent 10% of the Petitioner’s gross

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<sup>6</sup> The Petitioner argued that even if the Board just examines the activities for the assessment year of March 1, 2001, as the Respondent argues, 83.179% of the activities were still educational and charitably related. *Thrasher argument; Petitioner brief at 8.*

<sup>7</sup> The Petitioner’s Trustees reports for 2000, however, identify \$15,635 in cash contributions, \$69,127 in discounted food service and room rental, \$12,500 in scholarships to member’s children, \$5,000 to widows for death benefits, and \$2,525 to members for reimbursement of hospitalization expenses which total approximately \$86,000. *Petitioner Exhibits A, 2 and 3.*

profit and 57% of its net profit. *Petitioner brief at 32; Petitioner Exhibits A and 9.* For 2001, the Petitioner donated \$20,220 in cash contributions, \$48,830.50 in discounted food service and room rental, \$13,425 in scholarships, \$5,500 widows' death benefits, and \$4,075 to members for reimbursement of hospitalization expenses, for a total of approximately \$92,000. *Id.* The Petitioner argues that contributions in 2001 represent 9.5% of its gross profit and 53% of its net profit. *Petitioner brief at 32; Petitioner Exhibits A and 10.*

- J. In response to the Respondent's case, Mr. Thrasher argued that Cesare Battisti's exemption should be granted based on the use of the property as a whole, instead of by segregating the property's use based on a room by room calculation. *Petitioner's brief at 4 – 6.* According to Mr. Thrasher, the General Assembly's intent is indicated by Ind. Code § 6-1.1-10-36.3(c)(3), which allows an exemption in the same percentage as the predominant exempt use bears to all of the use, multiplied by the "total assessment of the property." *Petitioner's brief at 5.*

### **Respondent's Contentions**

26. The Respondent contends the Petitioner is not entitled to an exemption on its real property and personal property.
27. The Respondent presented the following evidence in support of its contention:
- A. The Respondent contends that the Petitioner failed to prove the property was owned, occupied and predominantly used for exempt purposes. *Respondent brief at 1.* According to the Respondent, the Petitioner's evidence shows that for the assessment year in question, March 1, 2001, to March 1, 2002, it rented its facilities to member and non-member individuals as well as for-

profit and not-for-profit organizations. *Id at 2, 4.* The Respondent acknowledges that at times the Petitioner offered reduced rental rates to not-for-profit organizations and other community members. *Id at 2.* However, the Respondent argues that for 2000, only six event contracts indicated that donations in the form of reduced rental rates were provided despite the 28 “donation letters” submitted by the Petitioner. *Respondent brief at 4 and 7.* The remaining 219 events included 83 weddings; 43 bridal or baby showers; 24 funeral luncheons; 10 reunions; 17 birthday, graduation, retirement, anniversary, going away or engagement/pre-wedding parties; 7 christenings or baptisms; 10 holiday parties; 13 dinner meetings or dinner dances, luncheons, and breakfasts; 2 balls or galas; 2 fundraisers, 1 prom, 2 St. Margaret Hospital Senior Games; 1 style show; 1 consumer show, 1 physician’s welcome; 1 Mothers’ dinner; and 1 Optimist Club initiation. *Id. at 4.*

- B. Similarly, the Respondent argues, in 2001, five event contracts identify a donation made to a non-for-profit or community organization. *Id. at 5.* The remaining 202 events included 82 weddings, 43 bridal or baby showers, 13 funeral luncheons, 10 reunions, 5 holiday parties, 5 christenings or baptisms, 21 birthday, graduation, retirement or graduation parties; 7 dinner meetings, dinner dances and luncheons; 2 fundraisers, 2 St. Margaret Hospital Senior Games; 1 St. Patrick’s Day family party; 2 style shows; 1 consumer show; 1 rehearsal dinner; 1 Wahoo Club activity; 1 mothers’ dinner; 1 Man of the Year banquet; 1 ladies club installation; 1 sportsman banquet; 1 homecoming; and 1 Hammond Clinic activity. *Id.* Donation letters suggest that 26 events were considered “charitable” by the Petitioner. *Id. at 7.* But regardless of whether the actual number of donations made to non-profit entities is five or 26, the Respondent argues, the vast majority of the use of the property was commercial and the Petitioner’s operation of the property is businesslike and not charitable. *Id. at 1.*



- C. Additionally, the Respondent contends that the Petitioner did not show that its offer of reduced rates to certain organizations is any different than negotiated rates charged to regular customers in the normal course of business. *Meighen argument; Respondent brief at 2.* According to the Respondent, it was simply a business decision intended to bring in more business and fill empty rooms. *Id.* In fact, the Respondent’s counsel argues that the prices that the Petitioner charged for different events were “all over the board.” *Respondent brief at 8.* According to the Respondent, “There is no evidence as to what Cesare would have charged organizations without discount, or the cost to Cesare, or even Cesare’s average cost or rental charge.” *Respondent brief at 7.*
- D. Similarly, the Respondent argues “There has been no showing of any distinction between discounted rates and customary rates charged by Cesare, or any comparison among rates charged by Cesare and others in the industry.” *Id. at 10.* For example, Ms. Meighen argues that two bridal showers on March 4, 2001, were charged \$10.50 per plate and a christening on June 10, 2002, was charged \$15.50 per plate. *Respondent brief at 8.* The Lake Central High School, however, was charged \$20.00 per plate for its Senior Dinner on April 27, 2001, and \$17.00 per plate for its Hockey Award Dinner on March 18, 2001. *Id.* The Petitioner claimed a donation for both Lake Central events. *Id.* In response to Ms. Meighen’s questions to the Petitioner’s witness as to why a bridal shower was charged less per plate than the Lake Central Hockey League that the Petitioner claimed received a donation in the form of a reduced food and rental rate, Mr. Baldin testified that “we charge less for bridal showers than we do for afternoon dinners. Bridal shower competition is tough and you have to maintain a lower price.” *Baldin testimony.*

- E. The Respondent further contends that to conclude that renting banquet facilities or restaurants to non-profit organizations is a charitable use in and of itself would effectively render all banquet halls exempt from property taxation. *Meighen argument; Respondent brief at 1-2 and 14*. According to the Respondent, “If the only difference between taxation and exemption is the customer’s organizational prohibition against profit..., then the correct statutory focal point of exempt use is ignored and the focus is incorrectly placed on how the customer’s income is employed.” *Id. at 14*. In support of her argument, Ms. Meighen cites *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257 (Ind. 2002) (The actual use of the facility, rather than the taxpayer’s charitable giving, is the controlling question in determining the taxpayer’s entitlement to an exemption). *Id.*
- F. The Respondent argues that the way the Petitioner calculated its “exempt” use exaggerates the influence of the office and storage areas on the Petitioner’s usage. *Meighen argument; Respondent brief at 9*. For example, the Petitioner calculated that use of the Villa by non-profit entities in March of 2001 was 2,825,399 sq.ft/ hrs. *Id.* However, the non-profit use assigned to the office and storage areas was 1,732,128 sq.ft./hrs. *Id.* Thus, Ms. Meighen argues, the office area and storage area – which comprise only about 2% of the total square footage of the facility – account for 62% of the Villa’s exempt usage for March 2001. *Id.* According to Ms. Meighen, “When Villa Cesare is rented an overwhelming number of times for nonexempt activities such as weddings, bridal/baby showers, funeral luncheons, anniversary parties and birthday parties, one is left with the distinct impression that something is amiss with Cesare’s room use schedule indicating approximately 80% exempt use.” *Id. at 19*.

G. Finally, the Respondent contends that the Petitioner failed to identify the personal property it is seeking exemption for and failed to provide any evidence regarding the use of any personal property. *Meighen argument; Respondent brief at 22*. According to the Respondent, without sufficient evidence to support a finding that its personal property is predominantly used for an exempt purpose, Cesare Battisti is not entitled to an exemption on its personal property. *Id.*

### **Analysis of the Issue**

28. Ind. Code § 6-1.1-10-16(a) states that “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.” Further, “a tract of land, ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(c). And “[p]ersonal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.” Ind. Code § 6-1.1-10-16(d).
29. The Petitioner contends that it qualifies as a charity for purposes of property tax exemption of its property. The Petitioner argues that it is an Indiana non-profit corporation affiliated with the Italo-American National Union, Inc. Additionally, according to the Petitioner, the organization is exempt under sections 101(3) and 501(c)(8) of the Internal Revenue Code.
30. Although exemptions in general are to be strictly construed against the taxpayer and in favor of the State, the term “charity,” as used in the property tax exemption statute, is favored with the broadest constitutional definition allowable.  
*Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm’rs, 251 N.E.2d 673, 682*

(*Ind. Ct. App. 1969*), *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 908 (*Ind. Tax Ct. 2006*). A charitable purpose generally will be found to exist for property tax purposes if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of people in general; and (2) there is an expectation, through the accomplishment of those charitable acts, that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *Sisters of St. Francis Heath Services, Inc. v. Lake County, Indiana, Property Tax Assessment Board of Appeals*, 868 N.E.2d 1224 (*Ind. Tax Ct. 2007*).

31. Charity is broadly defined as a gift for, or institution engaged in, public benevolent purposes. *Raintree Friends Housing, Inc. v. Indiana Dept. of State Revenue*, 667 N.E.2d 810, 813 (*Ind. Tax Ct. 1996*). Charity is an attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular. *Id. at 814*. The Indiana Tax Court has acknowledged that the term “charity” can, and should, include more than traditional “giving to the poor.” *College Corner at 909*. But charity such as will justify an exemption is more than a seal, a charter, and social activities common to all of society. *Indianapolis Osteopathic Hosp, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1015 (*Ind. Tax Ct. 2004*).
32. The test used to determine whether all or a portion of a property qualifies for an exemption 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 stated 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 that 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).

33. The Petitioner first argues that all of its activities should be exempt because of the charitable nature of the organization, but property tax exemptions are granted on the basis of how property is used rather than the character or status of the owner of the property. For example, the Petitioner argues that it is a non-profit organization. However, 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). Thus, while the Petitioner is a non-profit organization, its charitable purpose must be proven before its tax exempt status is assured. *Id.*

34. The Petitioner also argues that it is like the organizations identified in Indiana Code § 6-1.1-10-25 and therefore all of its activities should be similarly exempt. Indiana Code §6-1.1-10-25 sets forth twelve miscellaneous organizations, including the Salvation Army, the Knights of Columbus, the American Legion, and the Boy Scouts and Girl Scouts of America, as exempt from property tax if their property is exclusively used and occupied for the purposes and objectives of the organization. According to the Petitioner, Cesare Battisti has many of the same characteristics as the miscellaneous organizations. It represents the same

demographics and it contributes more to charitable endeavors in the local community. Regardless of whether Cesare Battisti functions in the same way as the statutorily named organizations, however, the legislature has not recognized it as an exempt organization in Indiana Code § 6-1.1-10-25. The Indiana Board of Tax Review does not have the authority to amend this law.

35. The Board must, therefore, determine whether the property is predominantly used for exempt purposes. Here, the subject property serves two distinct functions. First it operates to house the Petitioner's fraternal activities. Second it functions as a banquet hall that is rented out for commercial purposes. Despite hundreds of commercial events being held at the Villa every year, the Petitioner allocates the facility usage and space in a way that it claims the property is used 83% of the time for charitable purposes. The Petitioner has the burden to specifically prove which individual activities are charitable and which events are commercial to show that the predominant use of its property is for exempt purposes.
36. The Petitioner claims all of its lodge meetings and special events are exempt. According to the Petitioner, such "fraternal use" of the property is exempt. However, nowhere in Ind. Code § 6-1.1-10-16(a) is "fraternal use" of a facility identified as an exempt use of a property.<sup>8</sup>
37. The Petitioner also argues it is a "charitable" organization and therefore all of its lodge meetings and special events should be exempt. According to the Petitioner's Articles of Incorporation, however, its purpose is to "create a better understanding of fellowship between Americans of Italian extraction; to participate and advance civic welfare; to teach higher ideals of citizenship; to band together for social purposes; to create sufficient funds to establish a home

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<sup>8</sup> Indiana Code § 6-1.1-10-16(b) includes a "fraternal purpose" exemption: "A building is exempt from property taxation if it is owned, occupied, and used by a town, city, township, or county for educational, literary, scientific, fraternal, or charitable purposes." While Cesare Battisti may serve some fraternal functions for its members, it is clearly not "owned, used, and occupied by a town, city, township, or county."

site for the meeting of its members to carry forth the purposes and ideology of the corporation; to assist those who are needy and in distress, by voluntary contribution.” As noted above, charity such as will justify an exemption is more than a seal, a charter, and social activities common to all of society. The Petitioner must prove that it is organized for the primary purpose of alleviating human want through obviously charitable acts, the benefits of which will inure to the general public sufficient to justify the loss of tax revenue. The Petitioner’s Articles do not imply such a primary purpose. Rather, the Articles show that the organization was formed with a focus on fellowship and furtherance of its social purposes with an allowance for charitable contribution.

38. While some of the Petitioner’s identified meetings may have had a charitable purpose, the Board was unable to clearly determine which meetings were for an exempt purpose and which meetings were for social or fraternal purposes. Petitioner’s Exhibit 18 identifies four trustee meetings between March 1, 2001, and March 1, 2002.<sup>9</sup> Petitioner’s Exhibit 18 also shows twelve member meetings and twelve woman’s club meetings. There were also approximately seventy house committee meetings, but only ten of the house committee meetings were identified as “scholarship” meetings. The vast majority were for accounting or secretarial purposes. Some committee meetings had no identified purpose. The Petitioner’s witness, Mr. Baldin testified that the meetings might address general lodge business, or may have more specific purposes such as awarding sick relief to members, scholarships to member’s children or to plan social and fundraising events for members. *Baldin testimony*. Thus, the Petitioner presented insufficient

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<sup>9</sup> Indiana Code § 6-1.1-10-36.3(a) states that an exemption is calculated based on “the time that it is used or occupied in the year that ends on the assessment date of the property.” The Petitioner argues, however, that it is appropriate to look at evidence of events occurring in other tax years to determine a property’s use or purpose. *Petitioner’s brief at 7*. That may be true where the use of a facility is limited or intermittent and evidence from other years may aid the Board in its evaluation of the evidence. Here, however, the property was open and operated the entire year and held hundreds of events and meetings from which the Board can make its determination. Thus, the Board finds the relevant time period to determine the property’s use is March 1, 2001, through March 1, 2002.

evidence to determine which meetings serve a charitable purpose and which meetings serve an administrative, fraternal or social purpose.

39. Similarly, there were fifteen lodge events, like the all member picnic or the children's Christmas party, and approximately thirty-five committee meetings specifically related to those special events. Although the Petitioner argues that proceeds from some of these events "are contributed 100 percent to the general fund of the Petitioner" and it is from the general fund that the Petitioner makes its cash contributions, the Petitioner's Trustee's Reports show that other expenses are paid from the Petitioner's general fund, including food for meetings, stipends for Italo-American National Union meetings and officer expenses. *Petitioner Exhibit 1*. Thus, the Petitioner has not shown sufficient nexus between its "special events" and its charitable contributions. Even if the Board considered these special events as fundraisers, there were only fifteen such events held in the assessment year ending March 1, 2002. Further, the Petitioner's witness testified that several events – specifically the Children's Easter and Halloween parties and the all member picnic – are not fundraisers. Again, this is insufficient to show the Petitioner's property is predominantly used for charitable purposes.
  
40. In addition to its lodge activities, the Petitioner operates its property like a commercial banquet facility. The Petitioner rents the Villa for events such as wedding receptions, bridal or baby showers or funeral luncheons – which the Petitioner's representative admits are not charitable or exempt. The Petitioner, however, counts these same events as exempt if the user was a member of the club because such events "further the purposes" of the lodge. The Board is not persuaded that a commercial event becomes charitable because the user is a member of the organization. While wedding receptions, bridal or baby showers, or funeral luncheons may further the social or fraternal purposes of the lodge, these are not exempt purposes.



41. The Petitioner also rents its facilities to non-profit organizations for various events. Mr. Baldin testified that any organization that provided the Petitioner with a tax-exempt identification number was considered a charitable use by the Petitioner. While the Petitioner provided the tax exempt identification numbers of the various entities, the Petitioner failed to present any evidence regarding the specific use of the property by those entities. A Petitioner has the burden to prove that its property was (1) owned for an exempt purpose, (2) occupied for an exempt purpose and (3) used for an exempt purpose. *See Indianapolis Osteopathic Hospital Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009, 1114 (Ind. Tax Ct. 2004). Once all three elements are met, the property can be exempt from property taxation. *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005). The Petitioner’s argument, however, short-circuits that burden and simply argues that if a property is occupied by a tax-exempt organization, the activity is an exempt activity. The Board declines the Petitioner’s invitation to simply assume that all uses of any property by a non-profit organization is an exempt use.
42. Further, the Petitioner contends that because it provides discounted room rates or food rates to these organizations these events are “charitable” and an exempt use. The Petitioner’s evidence, however, is not clear whether actual donations were made to these non-profit entities. As the Respondent notes, only five event contracts identify a donation made to a not-for-profit or community organization in 2001 despite the Petitioner’s 26 “donation” letters. *Id. at 5*. In addition, the Petitioner did not show that its offer of reduced rates to certain organizations is fundamentally different from the negotiated rates charged to regular customers in the normal course of business. In fact, the Petitioner’s evidence shows that lower food rates were charged for commercial uses than for events that purportedly had part of its food rate “donated.” Moreover, even if the Board were to count all 26

donation letters in 2001, there were over 200 other events held at the facility. Thus, at best, this use accounts for barely 10 – 15% of the facility’s usage.

43. The Petitioner also uses the facility to provide Italian classes approximately once a week. While this may be a clear educational use of the facility, again, this only accounts for a small percentage of the facility’s use. According to the Petitioner’s Room Use Schedule, for the tax assessment year ended March 1, 2002, this use accounts for 4% of the total hours the facility was used and 13% of the total square feet by hours.
  
44. Even if the Board accepted the Petitioner’s argument that each of its designated activities was exempt, the Petitioner’s predominant use calculation rests on its designation of all of its administrative time and space as exempt. According to the Petitioner, the offices are used for Cesare Battisti’s affairs, general business, building management, storage, and direct charitable activities. Additionally, there is a garage and office storage area which is used primarily for storage. The Petitioner counts all of its office, storage and garage space as exempt time, 24 hours a day, 7 days a week. The Board is not persuaded, however, by the Petitioner’s argument that 2% of the building’s area accounts for over 60% of the Petitioner’s “exempt” usage or that an empty storage room or garage is fulfilling a charitable purpose. Further, despite hosting hundreds of events that the Petitioner admits are commercial in nature – which comprise about 90% of the outside events held on the property – the Petitioner allocates no administrative time to the events. Nor does it allocate any storage or office space for the furnishings or paperwork associated with events such as weddings and retirement dinners and baby showers. The Board finds this reasoning wholly unpersuasive. Thus, the Petitioner has not sufficiently shown that all of its administrative time, office space and storage and garage space are charitable.

45. Finally, the Petitioner argues that Cesare Battisti makes regular charitable contributions and thus should be exempt as a charitable organization. *Thrasher argument*. In support of this contention, the Petitioner submitted a donation report and donation acknowledgements. *Petitioner Exhibits 2 and 3*. The reports identify charitable donations of \$104,787 in 2000, and \$92,100.50 for 2001.<sup>10</sup> *Petitioner Exhibit A*. While charitable giving may serve as evidence to support a claim of charitable use, the statutory test is the predominant use of the property, not the distribution of income for charitable purposes. *New Castle Lodge #147, Loyal Order of Moose, Inc.* 765 N.E.2d at 1263. Thus, the Petitioner failed to show that its property is entitled to an exemption.<sup>11</sup>
46. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment 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**

46. The Petitioner failed to establish a prima facie case that its land, improvements and personal property are entitled to an exemption. The Board finds in favor of the Respondent.

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<sup>10</sup> The Trustees' Reports, however, only identify cash donations of \$20,335 for 2000 and \$25,070 for 2001. *Petitioner Exhibit 1*.

<sup>11</sup> The Petitioner also claimed an exemption for its personal property. The Petitioner, however, failed to present any evidence regarding the use of its personal property. In fact, the Petitioner did not identify or describe any of the items at issue. The Board therefore cannot find that the Petitioner is entitled to an exemption for its personal property.

The Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date 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 pursuant to 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 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/bills/2007/SE0287.1.html>.**