

REPRESENTATIVES FOR THE PETITIONER: Timothy J. Hubert, Attorney, Ziemer, Stayman, Weitzel & Shoulders, LLP; Ray Stein, member of Child Evangelism & Fellowship

REPRESENTATIVES FOR THE RESPONDENT: Mr. Khris Seger, Hearing Officer, Vanderburgh County; Joe Gries, Deputy Assessor, Knight Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

CHILD EVANGELISM & FELLOWSHIP)	
)	
)	
Petitioner,)	
)	Petition No: 82-026-96-2-8-00035
v.)	County: Vanderburgh
)	Township: Knight
)	Property Parcel # 09-400-14-054-044
)	Assessment year: 1996
)	
VANDERBURGH COUNTY BOARD)	
Of REVIEW)	
)	
Respondent.)	

Appeal from the Final Determination of
Vanderburgh County Board of Review

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 is, without distinction, referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether the real property and improvement owned by Child Evangelism & Fellowship ("CE & F") qualifies for property tax exemption for religious purposes under Ind. Code Section 6-1.1-10-21(a) or under Ind. Code Section 6-1.1-10-16.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall be considered a finding of fact.
2. CE & F filed a Form 136 Application for Exemption on April 23, 1996, for the tax year 1996, payable 1997. The Vanderburgh County Board of Review (County Board) issued a determination denying the exemption on August 20, 1996. On September 17, 1996, CE & F filed a Form 132 Petition for Review of Exemption with the Board, alleging exemption for religious purposes under Ind. Code § 6-1.1-10-16.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held in this matter on November 16, 2000, before Hearing Officer Sandra M. Oakes. CE & F was represented by counsel, Timothy Hubert, Ziemer, Stayman, Weitzel & Shoulders, LLP. An executed Power of Attorney is attached to Board Exhibit A. Ray Stein was also present on behalf of CE & F. Khris Seger, Board Hearing Officer,

represented the Vanderburgh County Board. Joe Gries, Deputy Assessor, Knight Township, was also present on behalf of the County Board. Testimony and documents were received into evidence.

4. At the hearing the Form 132 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing is labeled Board Exhibit B. In addition the following documents were submitted:

Petitioner's Exhibit 1: Transcript of the Board of Review hearing August 8, 1996 (Testimony of Mr. Olson)

Petitioner's Exhibit 2: Articles of Incorporation and Charter

Petitioner's Exhibit 3: By-Laws

Petitioner's Exhibit 4: List of Activities of CE & F, January 1995 to December 1995

Petitioner's Exhibit 5: Financial Statements and Balance Sheet, 1995

Petitioner's Exhibit 6: Affidavit of William G. Bennett, Jr.

Respondent's Exhibit A: Memorandum Finding of the PTABOA with attachments:

Item 1: Exemption Memorandum of June 12, 1996

Item 2: Minutes from Hearing August 8, 1996

5. At the hearing, CE & F requested additional time in which to submit written argument in support of its position. That request was granted by the Hearing Officer, and CE & F was granted an additional thirty (30) days from the date of the hearing in which to file a memorandum with the Board. Additionally, the County Board was granted a period of fifteen (15) days following the submission of CE & F's memorandum to file a response to the same.

6. On December 22, 2000, past the thirty day period allotted, the Board received and file stamped CE & F's memorandum. On January 5, 2001, the Board received and file stamped the County's memorandum. The County did not object to the untimeliness of CE & F's submission and the same was reviewed and considered by the Hearing Officer, as was the County's response. CE & F's memorandum is marked and admitted as the Petitioner's Exhibit 7, and the County's memorandum is marked and admitted as the Respondent's Exhibit B.
7. The real property at issue is located at 1900 E. Morgan Avenue, Evansville, Knight Township, Vanderburgh County. The property is improved by a building, which houses CE & F. CE & F, Inc. is an Indiana not-for-profit corporation and received its charter in January of 1969. The hearing officer did not view the property. (See Petitioner's Exhibit 2).
8. At the time of the August 8, 1996, Board of Review hearing, Mr. Ken Olson was the Executive Director of CE & F, and had been for eight years prior; since that time he has left CE & F. He and his spouse were the only compensated employees of CE & F, and at the time of the hearing in August of 1996, they resided in the subject property as a condition of his employment. The Olsons did not pay to reside at the property but resided there for accessibility, security, and to assist with the maintenance of the property. *Petitioner's Exhibits 1 and 6. Respondent's Exhibit A (2).*
9. The property was used for training teachers for the "Good News Club" and a "Friday Backyard Bible Club." The property also included a "sales floor" where CE & F sells materials to Sunday School teachers and other volunteers that CE & F trains. CE & F charged \$ 35.00, mostly for materials, for what he referred to as a college level course, "Teaching Children Effectively," but CE & F did not charge for its other training. Monthly Board Committee meetings and weekly classes were held in the living room area of the subject property. During the

year prior to the August 1996 hearing, the organization held classes, once per week for two and a half hours, designated “Lessons and Lunch.” People come in at all times to purchase materials from the organization. *Petitioner’s Exhibit 1.*

10. The building was divided into several rooms, some of which were used by CE & F, some by the Olsons, and some which were shared areas. CE & F used the front room as a reception area to display and sell teaching materials. CE & F also used an office, a closet, a recording room, a workroom, and a room for storage of the materials that the organization sold and utilized. The building also contained rooms designated as “shared areas,” which included the dining area used as a second office, a living area used for “classroom clubs” and meetings, a room designated “missionary quarters,” and a bath, hall, stairs and furnace and water heater area. Areas designated for use by the Olsons included two bedrooms, a kitchen, and a laundry area. *Petitioner’s Exhibits 1 and 6.*
11. CE & F is part of an international “mission” organization in existence for over 50 years and is a 501(c)(3) entity relying on contributions to support the organization. The purpose of the organization is, “to evangelize boys and girls and to establish (disciple) them in the word of God and in a local church for Christian living.” The organization is not a church; it does not have church services, yet it “builds moral principles and values into boys and girls using the word of God which is virtually the same purpose as a church.” CE & F is similar to organizations such as “TTT, Navigators, Campus Crusades, Christian Fellowship Church, Bethel Temple, and Heritage Baptist” in terms of a statement of Faith. Neither Mr. Olson nor his wife were ordained ministers. *Petitioner’s Exhibits 1 and 3.*
12. CE & F additionally maintains it has been exempt since 1979 and since the legislature has failed to take action to change CE & F’s status, CE & F is now entitled to exemption based upon the doctrine of legislative acquiescence.

Petitioner's Exhibit 1 and 7.

13. Mr. Ray Stein, a member of CE & F, has been involved in CE & F “on and off” for approximately thirty (30) years, including serving on the Board and serving as Director. Petitioner’s Exhibit 6 (a diagram drawn by Mr. William Bennett, previous Treasurer of CE & F, who was present with Mr. Ken Olson, Director of CE & F, at the Board of Review hearing in August of 1996) is an accurate depiction of the subject property and its use. The designation in the diagram that CE & F utilized 605 square feet, that the Olsons utilized 551 square feet, and that the “shared” area utilized by both CE & F and the Olsons, was 559 square feet is accurate. *Stein Testimony. Petitioner's Exhibit 6.*
14. Respondent argued that the predominant use of the property in 1996 was as a residence, as Mr. Ken Olson, then Director of CE & F, and his spouse resided at the property; as such the property is not entitled to exemption from property taxation. *Seeger Testimony.*

Conclusions of Law

1. The Board is the proper body to hear an appeal of the action of the Board of Review pursuant to Ind. Code § 6-1.1-15-3.

A. **Burden In General**

2. The courts have long recognized that in the administrative review process, the Board is clothed with quasi-judicial power and the actions of the Board are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the Board has the ability to decide the administrative appeal based upon the evidence presented.

3. In reviewing the actions of the County Board, the Board is entitled to presume that its actions are correct. “ Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816,820 (Ind. Tax 1995).
4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
5. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the Board can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
6. If the taxpayer is not required to meet his burden of proof at the State administrative level, then the Board would be forced to make a case for the taxpayer. Requiring the Board to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
7. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

8. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence.

B. Constitutional and Statutory Basis for Exemption

9. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
10. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, the Church claims exemption under Ind. Code § 6-1.1-10-16 which provides that all or part of a building is exempt from property taxes if it is owned, occupied, and used for religious or educational purposes.
11. For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

C. Basis of Exemption and Burden

12. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
13. 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).

14. Strict construction views exemption from the concept of the taxpayer citizen. 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*, 671 N.E. 2d 218 (Ind. Tax 1996)(NAME). 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.
15. For precisely this reason, worthwhile activities or a “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)).
16. 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).

D. Conclusions Regarding Claim of Legislative Acquiescence

17. CE & F argues that because the organization had always been granted an exemption from property taxation, the doctrine of legislative acquiescence prevents the Board from making a determination now that the property is taxable. The Indiana Supreme Court has specifically rejected this argument, holding that, “the administrative interpretations involved in the decisions to grant those

exemptions in former years did not have the notoriety and significance which sheds light on legislative silence and inaction.” *St. Mary’s Medical Center of Evansville, Inc., et al. v. State Board of Tax Commissioners, et. al*, 571 N.E.2d 1247, 1250 (Ind. 1991) As such, the doctrine of legislative acquiescence does not preclude the Board from issuing a determination that the property at issue is subject to taxation.

E. Educational Purposes Claim

18. The facts in this case are not in dispute. There is some question as to whether CE & F qualified for exemption for educational purposes, as reflected in the discussion among the Board of Review members as to whether CE & F qualified under the “educational portion of the religious purposes exemption.” The County referenced the educational purposes exemption under Ind. Code Section 6-1.1-10-16 due to the religious education which took place on the property.
19. To qualify for an educational purpose exemption, an organization must show that it provides at least some substantial part of educational training, which would otherwise be furnished by tax-supported schools. *NAME, Id.* The record is void of any evidence that CE & F provided any instruction that would otherwise be furnished by tax-supported schools. To the extent CE & F seeks exemption under Ind. Code Section 6-1.1-10-16, for educational purposes, it has not met its burden in demonstrating it qualifies under that section. As such, CE & F is not entitled to exemption for educational purposes.

F. Conclusions Regarding Religious Purposes Claim

20. Again, the facts in this case are not disputed. The controversy in this matter centers on the use of the property in 1996 as a dwelling, though not a parsonage, and the fact that CE & F is not a “church.” Discussion of the complicated

references, by both the Petitioner and the Respondent County, to the percentage of the *building* being used predominantly for religious purposes, in contrast to the statutory language referring to the percentage of the *time* that the property is used for exempt purposes. (See, e.g., Petitioner's Exhibit 1, Minutes of the August 8, 1996 hearing, pg. 12, comments by Field Inspector Ethan Bowers; Petitioner's Exhibit 6, Affidavit of William G. Bennett, Jr., Treasurer of CE & F).

21. The County correctly argues that the property is neither a parsonage nor a church; the Olsons concede that they are not ordained ministers and that the building is not used for religious services. Therefore Ind. Code § 6-1.1-10-21 cannot be the basis for Petitioner's exemption.
22. The County's contention serves to assume that CE & F must qualify under Ind. Code Section 6-1.1-10-21 provides specifically for the exemption of buildings used as parsonages and sets forth provisions and requirements for the same. However, CE & F seeks exemption pursuant to Ind. Code Section 6-1.1-10-16, wherein the property is exempt if it is owned, used and occupied for religious purposes.
23. A property which is not exempt under one statute may be exempt under the provisions of another. *The Indiana Association of Seventh-Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, at 939-940 (Ind. Tax 1987); (duplex not qualified for exemption as a parsonage may be exempt under general provisions of Ind. Code Section 6-1.1-10-16.) ; *State Board of Tax Commissioners v. Wright*, 215 N.E.2d 57 (Ind. App.Ct. 1966). (fact that property did not qualify as parsonage for exemption under previous statutes did not preclude property from exemption under another section.) See also, *Lincoln Hills Development Corp. v. Indiana State Board of Tax Commissioners*, 512 N.E.2d 1360, (Ind. Tax 1988), (statute exempting property if it is owned by not-for-profit corporation and used for operation of residential facility for aged grants

exemption unrelated to that contained in Ind. Code § 6-1.1-10-16 for religious or charitable purposes, and thus operators of facilities for aged are not precluded from claiming exemption under latter statute). The statutes at issue grant unrelated exemptions and the provisions are not in conflict. Therefore the rule of statutory construction that more specific provisions control over general provisions is not applicable. *Lincoln Hills Development Corp. v. Indiana State Board of Tax Commissioners*, 512 N.E.2d 1360, (Ind. Tax 1988). See also, *Don Meadows Motors, Inc., v. State Board of Tax Commissioners*, 518 N.E.2d 507,508 (Ind. Tax 1988).

24. Determining the eligibility for exemption under the Ind. Code § 6-1.1-10-16 for religious purposes requires examination of the use of the property.
25. The County's first argument centers on the "religious" purpose itself. In its Memorandum, admitted herein as Respondent's Exhibit A, the County relies on a State Board of Tax Commissioners bulletin that set forth certain factors, which may be considered by local boards in determining whether a given property is being used for "religious" purposes. The absence of these factors, the County argues, is indicative that a given property is not being used for religious purposes.
26. The County relies upon what it perceives as the absence of two factors. First, the County asserts there is an absence of "A belief which occupies the same place in the lives of its holders that the traditional religious beliefs occupy in the lives of holders of traditional religious beliefs." (Respondent's Exhibit B) Given the stated purposes of the organization and its activities as set forth in the by-laws this argument is not persuasive.
27. Second, the County asserts that, "The beliefs of the organization should result in some affirmative actions or failures to take action based on the belief. An

example of such affirmative action is attendance at a weekly service.” (Respondent’s Exhibit B) The County argues that the record is void of any evidence “that the beliefs of the Fellowship result in affirmative actions of the belief being undertaken at the property in question.” Again, given the stated purposes of the organization and the activities of the organization that are not in dispute, this argument is likewise unpersuasive. Moreover, although the organization did not itself host a weekly church service, weekly meetings focusing on training evangelists to evangelize children and establish them in a “Bible believing church” did take place at the subject property.

28. The evidence demonstrated that the property is used for religious purposes. Thus, in considering the Church’s religious purposes claim, the issue remains whether the record demonstrates the predominant use of the property.
29. Property must be predominantly used for the exempt purpose. Ind. Code § 6-1.1-10-36.3. “Predominant use” is defined as property used or occupied for the exempt purpose more than 50% of the time. *Id.*
30. The County asserts that the property is used primarily as a dwelling and as such is not entitled to exemption.
31. CE & F is correct in its assertion that the use of property as temporary dwellings and for religious instruction may qualify for exemption. See, e.g., *The Indiana Association of Seventh-Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, at 939-940 (Ind. Tax 1987); and *State Board of Tax Commissioners v. Wright*, 215 N.E.2d 57 (Ind. App.Ct. 1966). In *Wright*, at issue were 104 cabins owned by the Wabash Annual Conference of the Free Methodist Church of North America, Inc., used for temporary dwelling purposes during an annual ten day summer conference during which time evangelistic and religious instruction is offered for the benefit of ministers and laymen. During the

conferences, the Church's work for the coming year is planned and discussed. In *Wright*, there were additional religious activities that took place on the property, and other organizations used the property for exempt purposes.

32. In the instant case, the evidence was undisputed that the occupation of the building serves a threefold purpose, namely, accessibility, security, and a source of maintenance of the property. Although the walls and ceiling of the house obviously provide shelter for the Mr. Olson and his spouse their occupancy furthers the religious purpose.
33. Furthermore, a significant portion of the property is used for religious purposes independent of the Olson's residential needs. See ¶ 13, Findings of Fact.
34. The fact that the property is occupied, in this instance by the Director of the organization, does not preclude a grant of exemption when considering the circumstances as a whole. The occupation of a portion of the property by its Director and other compensated employee, his spouse, is reasonable related to the furtherance of the activities of the organization. This evaluation is consistent with the Tax Court's holding in *Alte Salems Kirche* wherein a mobile home with paying tenants located on the subject property was found to be 100% exempt where the presence of the tenants and the mobile home served to deter vandalism and ultimately decrease insurance costs for the church who owned the property.
35. For the above reasons, the State Board finds that CE & F is entitled to 100 % exemption for religious purposes under Ind. Code 6-1.1-10-16 for the land, improvement, and personal property for the tax year 1996, payable 1997.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review