

REPRESENTATIVES FOR PETITIONER: Ernest W. Smith, Attorney for Clayton Roberson Family Foundation, H. James Dial, Nidrah Dial, and Jack R. Roberson, Directors of the Clayton Roberson Family Foundation

REPRESENTATIVES FOR RESPONDENT: None

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

CLAYTON ROBERSON FAMILY FOUNDATION	)	
	)	Petition No: 13-007-97-2-8-00001
Petitioner	)	
	)	County: Crawford
v.	)	
	)	Township: Sterling
	)	
	)	Parcel Nos.: 07-0547
	)	07-0081
CRAWFORD COUNTY BOARD OF REVIEW	)	07-0910
	)	
	)	
Respondent	)	Assessment Year: 1997
	)	

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Appeal from the Final Determination of  
Crawford County Board of Review

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**[January 6, 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 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 was:  
*ISSUE – Whether the property qualifies for exemption under IC §6-1.1-10-16 for educational or charitable purposes.*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-15-3, the Clayton Roberson Family Foundation (Foundation) filed a Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on May 8, 1997. The Crawford County Board of Review (BOR) issued the Form 120 on August 12, 1997.

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

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on March 30, 1998 in English, Indiana before Kaye Schwade, the duly designated hearing officer.
4. The following persons were present at the hearing:

For the Petitioner:

Mr. Ernest W. Smith, Counsel for the Foundation

H. James Dial, Director of the Foundation

Nidrah Dial, Director of the Foundation

Jack R. Roberson, Director of the Foundation.

For the Respondent:

No one was present to represent the County.

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

H. James Dial, Director of the Foundation

Nidrah Dial, Director of the Foundation

Jack R. Roberson, Director of the Foundation.

For the Respondent:

No one.

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – Certificate of Incorporation

Petitioner's Exhibit B – Balance sheets for September 30, 1997 and February 28, 1998 and Statements of Revenue and Expenditures for September 30, 1997 and February 28, 1998

Petitioner's Exhibit C – Anticipated budget for 1998 and 1999

Petitioner's Exhibit D – By-laws of the Foundation

Petitioner's Exhibit E – Letter with application for employer identification number

Petitioner's Exhibit F – State Form 2423 for 1997

Petitioner's Exhibit G – Historical background of the property

Petitioner's Exhibit H – Original financial contribution to the Foundation.

For the Respondent:

None.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board exhibits:

Board Exhibit A- Copy of the Form 132 with attachments

Board Exhibit B- Notice of Hearing.

8. The subject property consists of 192.176 acres of land and a pole barn located in Sterling Township, Crawford County. The Hearing Officer did not view the property.

**Jurisdictional Framework**

9. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
10. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

**Indiana's Property Tax System**

11. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

**State Review and Petitioner's Burden**

12. The State does not undertake to reassess property, or 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).
13. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. 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.]

14. 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.]
15. 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.]
16. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm’rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
17. The State will not change the determination of the County Board of Review unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. 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.]

## Property Tax Exemption

18. Generally, all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

19. Article 10, § 1 of the Indiana Constitution reads:

(a) The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property real and personal. The General Assembly may exempt from property taxation any property in the following classes:

(1) Property being used for municipal, educational, literary, scientific, religious, or charitable purposes.

20. Article 10, § 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. Ind. Code § 6-1.1-10-16 is the provision enacted by the General Assembly for the exemption of property owned, occupied and used for the above stated purposes in general. It reads in pertinent part:

(a) All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, or charitable purposes.

(c) A tract of land, including the campus or athletic grounds of an educational institution, is exempt from property taxation if:

(1) A building which is exempt under subsection (a) or (b) is situated on it; and

(2) The tract does not exceed:

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(B) fifteen (15) acres in all other cases.

21. The justification for tax exemption is the public benefit. *State Board of Tax Commissioners v. Wright* (1966), 139 Ind. App. 370, 215 N. E. 2d 57. The purpose of tax exemption, whether for religious or other classification, is to insure that the property and funds devoted to one public benefit are not diminished by being diverted through taxation for another public benefit. *Id.*
22. The grant of tax exemption releases property from the obligation of bearing its share of the cost of government and disturbs the equality and distribution of the common burden of government upon all property. *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 280 (Ind. Tax 1989), *aff'd.*, 571 N.E. 2d 1247 (Ind. 1991). The grant of tax exemption shifts the tax burden to others or results in the loss of tax revenue. *NAME*, 671 N.E. 2d at 220.
23. Accordingly, exemptions are strictly construed against the organization seeking exemption and in favor of taxation. *Id.* at 220; *Indiana Association of Seventh-Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938, (Ind. Tax 1987). A taxpayer seeking exemption bears the burden of proving that it is entitled to exemption. *NAME*, 671 N.E. 2d at 220 (citing *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 611 N.E. 2d 708, 714 (Ind. Tax 1993)). As a condition precedent to being granted an exemption for charitable or educational purposes, the taxpayer must demonstrate that it provides "a present benefit to the general public...sufficient to justify the loss of tax revenue." *St. Mary's Medical Center*, 534 N.E. 2d at 279.
24. In determining whether the property qualifies for exemption, the predominant and primary use of the property controls. *NAME*, 671 N.E. 2d at 220, (citing *Fort Wayne Sports Club*, 258 N.E. 2d at 881 and *Indianapolis Elks Buildings Corp. v. State Board of Tax Commissioners*, 251 N.E. 2d 673, 679 (Ind. App. 1969)).
25. The use of the property for exempt purpose is the minimum requirement for exemption, but the General Assembly may add other requirements when enacting exemption statutes. *Sangralea Boys Fund, Ind. v. State Board of Tax Commissioners*, 686 N.E. 2d 954, n. 2 (Ind. Tax 1997).

## Discussion of Issue

ISSUE : *Whether the property qualifies for exemption under IC §6-1.1-10-16 for educational or charitable purposes.*

26. The Petitioner contends that the subject property should be exempt from property taxes for charitable and educational purposes.

27. The applicable rules and case law governing this Issue are:

### **IC 6-1.1-10-16(a)**

All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.

### **IC 6-1.110-16(c)**

A tract of land, including the campus or athletic grounds of an educational institution, is exempt from property taxation if a building which is exempt under subsection (a) or (b) is situated on it and the tract does not exceed fifty (50) acres in the case of an educational institution or a tract that was exempt on March 1, 1987 or fifteen (15) acres in all other cases.

### **IC 6-1.1-10-36. 3(a)**

Property is predominately used or occupied for one of the stated purposes if it is used or occupied for one or more of those purposes during more than 50% of the time that it is used or occupied in the year that ends on the assessment date of the property.

### ***Raintree Friends v. SBTC, 667 N.E. 2d at 813-14***

Charity defined in part as “an attempt in good faith to advance and benefit mankind in general.....without regard to their ability to supply that need from other sources and without hope or expectation.....of gain or profit.”

### ***National Association of Miniature Enthusiasts v. State Board of Tax Commissioners, 671 N.E. 2d at 221(Ind. Tax 1996)(NAME)***



To qualify for an educational purpose exemption, it must be proven that at least some substantial part of the educational training provided would otherwise have to be furnished by our tax-supported schools. It must benefit the public at large by relieving the government of some of an obligation that it would otherwise be required to fill.

28. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The Foundation is an Indiana, nonprofit corporation.
  - B. The subject land was a family-owned farm that the family decided to make into a public park called sycamore Springs. The creation, preservation and operation of this property as a public park represent the principal purpose of the Foundation.
  - C. The Foundation's work includes planning and constructing picnic and camping areas, as well as cabins and dormitories. The work also includes conserving water, trees, and other plant and indigenous wildlife. There is also work involved in studying and preserving an area where evidence of native Americans has been found.
  - D. The Foundation is funded by privately donated funds and be the beneficiary of a trust that should fund the park indefinitely.
  - E. The Foundation has applied for 501(c)(3) status.

#### Analysis of the Issue

29. The Petitioner stated that the subject property should be exempt for charitable and educational purposes.
30. To qualify for an educational purpose exemption, the Petitioner must show that it "provides at least some substantial part of the educational training which would otherwise be furnished by our tax supported schools." *NAME*, 671 N.E. 2d at 221 (quoting *Fort Wayne Sport Club*, 147 Ind. App. at 140, 258 N.E. 2d at 882).

31. “An educational exemption is available to taxpayers who provide instruction and training equivalent to that provided by tax supported institutions of higher learning and public schools because to the extent such offerings are utilized, the state is relieved of its financial obligation to furnish such instruction.” *NAME*, 671 N.E. 2d at 222 (quoting *Fort Wayne Sport Club*, 147 Ind. App. At 140, 258 N.E. 2d at 881-82).
32. The educational activity must confer a public benefit. Obviously, the closer the activity is to the type of educational activity traditionally occurring in public schools, the more obvious is the public benefit. *Professional Photographers of American, Inc., v. State Board of Tax Commissioners* 148 Ind. App. 601, 268 N.E. 2d 617 (1971); *Ft. Wayne Sport Club*, 147 Ind. App. At 129, 258 N.E. 2d 874 (1970).
33. The Petitioner did not offer probative evidence that they relieve the State of any of its educational burden. The Petitioner has failed to demonstrate that their educational activities and curriculum confer a benefit to the general public. In the current situation, the Petitioner conducts no educational activities.
34. To meet its burden, the Petitioner would have needed to demonstrate how its activities educated the public on subjects of instruction furnished by tax supported schools.
35. For all of the above reasons, the State finds that the Petitioner is not entitled to the educational purpose claim.
36. The Petitioner has also claimed exemption under Ind. Code § 6-1.1-10-16 for charitable purposes. Pursuant to this section, property is exempt from taxation “if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.”
37. Indiana courts broadly construe the term “charitable” as the relief of human want and suffering in a manner different from the everyday purposes and activities of man in general. *Name*, 671 N.E. 2d at 221 (quoting *Indianapolis Elks Bldg. Corp. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 540, 251 N.E. 2d 673, 683 (Ind. App. 1969)).

38. “Charity” is not defined by statute, and the Tax Court looked to *Black’s Law Dictionary* to find the plain, ordinary, and usual meaning of “charity”; namely:
- a gift for, or institution engaged in, public benevolent purposes. [It is a]n 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, without regard to their ability to supply that need from other sources and without hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.
- Raintree Friends*, 667 N.E. 2d at 813 - 14 (quoting *Black’s Law Dictionary*, 213 (5<sup>th</sup> ed. 1979).
39. Plainly, “charity” is not confined to relief for the destitute. It may be limited to one sex, church, city, or confraternity. *City of Indianapolis v. The Grand Master, etc. of the Grand Lodge of Indiana*, 25 Ind. 518, 522-23 (1865).
40. It is equally clear that “charity” must confer benefit upon the public at large or relieve the government of some of an obligation that it would otherwise be required to fill. *Name*, 671 N.E. 2d at 221; *Foursquare Tabernacle*, 550 N.E. 2d at 854; *St. Mary’s Medical Center*, 534 N.E. 2d at 279. Relieving the government from an obligation that it would otherwise be required to fill can be seen as a benefit to the public at large.
41. As the park is currently being developed, and not being used by the public at large, the Petitioner has failed to show the park qualifies for a charitable exemption. The Petitioner clearly is planning on developing a park, which may in the future confer a benefit upon the public. However, This is not a present benefit, future benefit remains certain.
42. The Petitioner failed to show how the property qualifies for an exemption as a charitable property because they did not show how they confer a benefit on the public at large or relieve the government of some obligation it would otherwise be required to fill.

43. Assuming the Petitioner did show that the property qualified for a charitable exemption, IC §6-1.1-10-16 would only allow fifteen acres to be considered exempt.
44. In *Sangranea, supra*, the Tax Court held that tax exemptions are strictly construed against the person claiming the exemption. The Tax Court has also held that the burden is upon the person claiming the exemption to show that the property falls specifically within the statute under which exemption is being sought. *Also, Indiana Seventh-Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).
45. In this case, the Petitioner did not, by a preponderance of the evidence, meet its burden to prove that the current exemption assessment is incorrect. Accordingly, there is no change in the assessment as a result of this appeal.

### **Summary of Final Determination**

Determination of ISSUE: *Whether the property qualifies for exemption under IC §6-1.1-10-16 for educational or charitable purposes.*

46. The Petitioner did not prevail by a preponderance of the evidence on this issue. There is no change in the assessment with regard to this issue.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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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.**