

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

COMMUNITY ALLIANCE OF THE FAR EASTSIDE, INC.,)	Petition No.: 49-700-98-2-8-00348
)	
Petitioner)	County: Marion
)	
v.)	Township: Warren
)	
MARION COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS,)	Parcel No.: G117037
)	Assessment Year: 1998
)	
Respondent)	
)	

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

July 21, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The 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

Issues

1. The issues presented for consideration by the Board were:
ISSUE 1 – Whether Community Alliance of the Far Eastside, Inc. is entitled to an exemption pursuant to Ind. Code § 6-1.1-10-16.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7 Anne-Marie Predovich filed a Form 132, Petition for Review of Exemption, on behalf of Community Alliance of the Far Eastside, Inc., (CAFÉ) (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on September 28, 1999. The determination of the PTABOA was issued on August 27, 1999.

Hearing Facts and Other Matters of Record

3. On January 13, 2000 the former State Board of Tax Commissioners sent a Notice of Defect to the Petitioner because a copy of the determination by the PTABOA, on the property tax exemption application (Form 136) must be attached to this appeal.
4. On February 18, 2000, the State Board received from Petitioner a letter arguing two points. First, the Petitioner claims that at the earliest they did not begin substantial operations until April 1, 1998. The Petitioner also claims the 1998 taxes should be exempt because Greenleaf Community Center was not dissolved until December 7, 1998.¹
5. Second, the Petitioner claims that the exemption application filed on April 29, 1999 erroneously stated the application was for 1998 when it was for 1999.

¹ Whether Greenleaf was entitled to an exemption cannot be determined because no appeal was filed on behalf of Greenleaf Community Center. Only CAFÉ filed an Exemption Application, therefore, the Board can only determine whether CAFÉ is entitled to an exemption.

6. The following additional items are officially recognized as part of the record of proceedings:
 - A. Letter received on February 18, 2000 and the attached Form 132 and Form 136.

Jurisdictional Framework

7. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

State Review and Petitioner's Burden

8. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
9. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
10. 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.]
11. 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.]

12. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case.' See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Constitutional and Statutory Basis for Exemption

13. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.
14. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
15. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996) (501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

16. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
17. 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).
18. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* (NAME), 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
19. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
20. 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).
21. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), the taxpayer must demonstrate that it provides “a present benefit to the

general public...sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E. 2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff’d* 571 N.E. 2d (Ind. Tax 1991)).

Discussion of Issues

ISSUE 1: *Whether Service Corporation of Indiana is entitled to an exemption pursuant to Ind. Code § 6-1.1-10-27.*

22. The sole issue considered in these findings is the timeliness of the Form 136. The Form 136 was filed on May 5, 1999. The Form 136 was filed for assessment year 1998. The Form 136 lists the personal property assessment for March 1, 1998 as \$6,940. On August 27, 1999, the Marion County Property Tax Assessment Board of Appeals (PTABOA) denied the Petitioner’s request for an exemption for tax year 1998.
23. On September 28, 1999, the Petitioner filed a Form 132 with the Marion County Auditor purportedly appealing the decision the PTABOA issued on August 27, 1999. The Form 132 that was filed listed the year of appeal as 1999. Furthermore, the Form 132 listed the personal property assessment for the March 1, 1999 assessment date as \$7,200.
24. In Indiana, the general proposition is that all property is subject to taxation. (See ¶16). Furthermore, in Indiana, exemption statutes are construed strictly. (See ¶17). Finally, Ind. Code § 6-1.1-11-1 states: “An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with the statutory procedures for obtaining an exemption, he waives the exemption. If the exemption is waived, the property is subject to taxation.”
25. A person seeking an exemption is required to file an application for the exemption on or before May 15 of the year in which the exemption is sought. Ind. Code § 6-1.1-11-3. In the instant case, the exemption application (Form 136) identified the year of filing and the Date of Assessment as 1998. To seek an exemption for tax year 1998, the Form 132

should have been filed on or before May 15, 1998. In this case, the Form 132 was filed nearly a year later. For this reason, the Form 132 for tax year 1998 is considered untimely filed, and therefore, must be denied.

26. The Petitioner argued in a letter that the original Form 136 erroneously stated the application was for 1998 when it was in fact for 1999. However, the PTABOA clearly thought the application was for 1998 when they denied the exemption application on August 27, 1999. The Form 120 issued by the PTABOA lists the year under appeal as 1998. Furthermore, it appears that there are two different assessment amounts under appeal.
27. The Form 136 identifies a personal property assessment amount of \$6,940 while the Form 132 identifies a personal property assessment amount of \$7,200. There was no explanation given for the difference. The Board assumes that if the Form 132 and Form 136 were both for the same year, the assessment amount would not change.
28. Finally, the Board has no jurisdiction over the Form 132 for tax year 1999 because there has been no decision from the PTABOA regarding the exemption application for tax year 1999. The decision of the PTABOA attached to the Form 132 was for tax year 1998.
29. For all the above reasons, the Board hereby DENIES the Petitioner's exemption application.

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

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.