

**STATE OF INDIANA
Board of Tax Review**

EAGLE LAKE HOMEOWNER'S ASSOCIATION, INC.)	On Appeal from the Allen County Property Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Review of Exemption, Form 132
v.)	Petition No. 02-057-96-2-8-00159
)	Parcel Nos. 24-4800-0043; 24-4858-0068;
ALLEN COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS)	24-4918-0123; 24-4959-0150
)	
)	
Respondent.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State, having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether land owned by Eagle Lake Homeowner's Association, Inc. (Eagle Lake) should be exempt from property taxes pursuant to Ind. Code § 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 also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, Eagle Lake (the Petitioner) filed an application for property tax exemption, Form 136, with the Allen County Auditor on March 24, 1997. The Allen County Property Tax Assessment Board of Appeals (PTABOA) denied the application on July 9, 1997 and gave Eagle Lake proper notice of denial.

3. Pursuant to Ind. Code § 6-1.1-11-7, Eagle Lake filed a Petition for Review of Exemption (Form 132) with the State seeking a review of the PTABOA action. The Form 132 petition was filed on October 8, 1997.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing held before Hearing Officer Joseph Stanford on February 11, 2002. Testimony and exhibits were received into evidence. Steve Clifford represented Eagle Lake. Judith E.K. Dafforn represented the PTABOA. Angela Sorg (Township Assessor) appeared on behalf of Perry Township.

5. At the hearing, the subject Form 132 petition, and related attachments, was made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following items were received into evidence:
Petitioner's Exhibit 1 – Photographs of pond.
Petitioner's Exhibit 2 – Photographs of front entrance.
Petitioner's Exhibit 3 – Letter from Internal Revenue Service.

6. Eagle Lake is a subdivision located in Fort Wayne, Indiana (Perry Township, Allen County). The Hearing Officer did not view the property. The land in question has been determined to be 100% taxable by the PTABOA.
7. Eagle Lake qualifies for exemption under federal section 501(c)(4). This section requires the subdivision to serve a community bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental unit, not conduct activities directed to the exterior maintenance of private residences, and make common areas or facilities available for the use and enjoyment of the general public. Eagle Lake meets the above qualifications by mowing grass along a major road at the entrance of the subdivision and having snow plowed within the subdivision. Eagle Lake is not involved in the maintenance of private residences, as that is the responsibility of each homeowner. *Clifford Testimony.*
8. While Eagle Lake has no common areas, there are three (3) retention ponds. These ponds not only serve Eagle Lake, but also serve surrounding areas for the run-off of rainwater. The ponds are not to be used for recreational purposes. *Id.*
9. The County Auditor directed the removal of exemptions from the subject property and similar properties. The grounds must be used for a public park to receive an exemption. Eagle Lake has not demonstrated a public benefit, because most subdivisions have ponds. *Sorg Testimony.*

Conclusions of Law

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

A. Burden

2. In reviewing the actions of the County Board (or PTABOA), the State 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). The taxpayer must overcome that presumption of correctness to prevail.

3. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
4. To meet his burden, the taxpayer must present probative evidence in order to make a prima facia case. In order to establish a prima facia case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230,1233 (Ind. Tax 1998); *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

B. Constitutional and Statutory Basis for Exemption

5. 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.
6. Article 10, Section 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, USAC seeks 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 scientific purposes. Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt from property taxation if it were a building. Ind. Code § 6-1.1-10-16(e).

7. 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.

C. Basis of Exemption and Burden

8. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
9. 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).
10. 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.
11. 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)).

12. 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).
13. 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 1247 (Ind. 1991)).

D. Conclusions concerning the exemption claim

Timeliness of Appeal

14. Pursuant to Ind. Code § 6-1.1-11-7(c), within thirty (30) days after the notice of denial is mailed, the owner may petition the State for a review of the determination of the PTABOA.
15. The PTABOA’s determination was issued on July 9, 1997. The Petitioner did not file the petition for review (Form 132) until October 8, 1997, clearly more than thirty (30) days after the PTABOA’s notice. Eagle Lake failed to follow the statutory procedures for petitioning a review of the PTABOA’s determination. For this reason, the petition must be denied.

Claim for Exemption

16. Even if the petition had been timely, Eagle Lake failed to prove that the property in question meets the requirements set forth by Ind. Code § 6-1.1-10-16 to receive an exemption.

17. The Petitioner does not use the land in a manner dictated by the statute. While Eagle Lake contends that the retention ponds serve as collection for water runoff, Eagle Lake failed to prove that this is an “educational, literary, scientific, religious or charitable purpose”. Improved stormwater detention, retention, and draining may be desirable to the development and possibly nearby property, the benefit of the ponds simply addresses a situation created by the development itself. Such property use has not been demonstrated to be a purpose recognized under Ind. Code § 6-1.1-10-16.

18. For these reasons, even if the petition had been timely filed, the Petitioner did not show that the property meets any of the requirements set forth by statute to receive the exemption claimed.

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