

REPRESENTATIVES FOR PETITIONER: Thomas Norton, Counsel for Evansville Urban Enterprise Community Service Corp. and Evansville Urban Enterprise Association, Inc.

REPRESENTATIVES FOR RESPONDENT: J.F. Rick Barter, Vanderburgh County Hearing Officer

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

EVANSVILLE URBAN)	
ENTERPRISE COMMUNITY)	
SERVICE CORPORATION)	Petition No: 82-028-98-28-00001
)	
Petitioner)	County: Vanderburgh
)	
v.)	Township: Pigeon
)	
)	Parcel No.: 1105021022001
VANDERBURGH COUNTY)	
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS and)	
PIGEON TOWNSHIP ASSESSOR)	
)	
Respondent)	Assessment Year: 1998
)	

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

January 7, 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 100% of the subject property should be exempt from property taxation.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Thomas Norton, Counsel for Evansville Urban Enterprise Community Service Corporation 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 June 10, 1999. The Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) issued the Form 120 on May 12, 1999, partially denying the requested exemption.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on August 20, 2002 in Evansville, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:
For the Petitioner:
Mr. Thomas Norton, Counsel for Evansville Urban Enterprise Community Service Corporation.

For the Respondent:

Mr. J.F. Rick Barter, Vanderburgh County Assessor's Office

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

For the Petitioner:

Mr. Thomas Norton, Counsel for Evansville Urban Enterprise Community Service Corporation.

For the Respondent:

Mr. J.F. Rick Barter, Vanderburgh County Assessor's Office

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – A memorandum presented by Thomas Norton.

Petitioner's Exhibit B – A copy of a page from the annual report describing "Curtis and Associates" primary focus.

7. The following exhibits were presented:

For the Respondent:

Respondent's Exhibit A – Hearing Memorandum presenting Vanderburgh County's Comments.

Respondent's Exhibit B – Exemption Memorandum dated April 12, 1999 with the following:

PTABOA Exhibit 1 – Comments from Rick Barter, dated February 27, 2002.

PTABOA Exhibit 2 – Minutes from the May 6, 1999 Board of Review Hearing.

PTABOA Exhibit 3 – Copy of the Property Record Card.

PTABOA Exhibit 4 – Copy of Plat of subject Property, Memorandum dated February 27,

2002, and a copy of the Minutes dated March 8, 2002.

8. 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
 - Board of Exhibit B- Notice of Hearing.
9. The real estate property is located at 501 John Street, Evansville, Pigeon Township, Vanderburgh County. The Vanderburgh County PTABOA denied exemption on 3.5 % of the improvements for 1998.

Jurisdictional Framework

10. 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.
11. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

Indiana's Property Tax System

12. 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

13. 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).

14. 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.]
15. 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.]
16. 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.]
17. 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).
18. 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

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

20. 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.

21. 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.

22. 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.*

23. 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.
24. 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.
25. 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)).
26. 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 100% of the subject property should be exempt from property taxation.

27. The Petitioner contends that all of the subject property should be 100% exempt from property taxation.
28. The Respondent contends that an exemption should be granted to all of the property with the exception of 964 square feet of space leased to a for-profit job placement service, which represents 3.5% of the total area of the improvement.
29. The applicable rules 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 6-1.1-10-36. 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.

IC 6-1.1-10-36.3(b)

If a section of this chapter states one (1) or more purposes for which property must be used or occupied in order to qualify for an exemption, then the exemption applies as follows:

(1) Property that is exclusively used or occupied for one (1) or more of the stated purposes is totally exempt under that section.

(2) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a church, religious society, or not-for-profit school is totally exempt under that section.

(3) Property 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.

(4) Property that is predominantly used or occupied for a purpose other than one (1) of the stated purposes is not exempt from any part of the property tax.

IC 6-1.1-10-36.3(c)

Property is not used or occupied for one (1) or more of the stated purposes during the time that a predominant part of the property is used or occupied in connection with a trade or business that is not substantially related to the exercise or performance of one (1) or more of the stated purposes.

IC 6-1.1-10-37

If real property that is exempt from taxation is leased to another whose property is not exempt and the leasing of the real property does not make it taxable, the leasehold estate and appurtenances to the leasehold estate shall be assessed and taxed as if they were real property owned by the lessee or his assignee.

IC 36-1-10-18

Structures, transportation projects, and systems leased by a lessor contracting with the political subdivision or agency under this chapter are exempt from all state, county, and other taxes. However, the rental paid to a lessor under the terms of a lease is subject to taxation.

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)

Charity must benefit the public at large by relieving the government of some of an obligation that it would otherwise be required to fill.

30. Evidence and testimony considered particularly relevant to this determination include the following:
- A. Curtis and Associates is a for-profit entity leasing a space from the not-for-profit Evansville Urban Enterprise Community Service Corporation. (Norton Testimony).
 - B. At the lease location Curtis and Associates serves one primary client, that being the Division of Family and Children Services, an agency of the State of Indiana. Curtis and Associates is hired on a contractual basis by the Department of Family and Children Services. (Norton Testimony, Petitioner’s Ex. A).
 - C. The County stopped its inquiry short as to the use or occupancy of the property on the presupposition that no other charitable or exempt purpose could arise out of the use of the property by Curtis and Associates. (Petitioner’s Ex. A).
 - D. In theory, the Department of Family and Children Services could lease the space and sublease it to Curtis and Associates. In such a scenario, the denial of the exemption would not occur. (Norton Testimony, Petitioner’s Ex. A).
 - E. The property for which the exemption was denied is in fact used in the support of governmental services for the State of Indiana, which also furnishes charitable services to the citizens of Vanderburgh County, Indiana. (Petitioner’s Ex. A).
 - F. Indiana Code §6-1.1-10-36.3(b)(3) should be analyzed from the standpoint that even though operated by a for-profit entity, the 3.5% of the property is primarily used and occupied to complete a governmental function, charitable in nature. (Petitioner’s Ex. A).

- G. Curtis and Associates does not fall under the auspice of *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, which elaborated on Indiana Code § 6-1.1-10-16. Curtis and Associates is a for-profit entity and may not qualify for exemption on its own merits. (Barter Testimony, Petitioner's Ex. B).
- H. The Service Center was organized as an Indiana not-for-profit corporation in 1996 and qualifies as a charitable organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. (Petitioner's Ex. B).
- I. The County has exempted all of the land and improvements, except for the 964 square feet (3.5%) that Curtis and Associates, a for-profit entity, leases from the Evansville Urban Enterprise Community Service Corporation. (Petitioner's Ex. B).

Analysis of the Issue

- 31. The Petitioner stated that the subject property should be 100% exempt. The Petitioner based this opinion on the fact that even though Curtis and Associates is in fact a for-profit entity, they serve only one primary client, that being the Division of Family and Children Services, an agency of the State of Indiana.
- 32. The Petitioner argued that in theory the Department of Family and Children Services could lease this space and sublease it to Curtis and Associates. According to the Petitioner, in such a scenario, the denial of the exemption would not occur.
- 33. Curtis and Associates is clearly a for-profit entity and therefore that alone disqualifies them from the exemption under IC 6-1.1-10-37, regardless the lease arrangements.
- 34. The Petitioner further claims that Curtis and Associates performs functions that are quasi-governmental or charitable in nature, such as helping people to advance to better jobs and develop job skills.
- 35. Curtis and Associates may indeed be engaged in works that benefit society, but it is doing it with the hope of profit. Curtis and Associates is not relieving the government of an

obligation; it is charging the government for its services. The Petitioner stated that if the property is taxed, Curtis and Associates will just pass the cost along by raising its rates.

36. 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).
37. 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 or that the proposed 100% exemption request is correct. Accordingly, there is no change in the assessment as a result of this appeal.

Summary of Final Determination

Determination of ISSUE: *Whether 100% of the subject property should be exempt from property taxation.*

38. 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.

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.