

REPRESENTATIVES FOR PETITIONER:

Marc H. Fisher, Secretary, Fraternal Order of Eagles #2455

REPRESENTATIVES FOR RESPONDENT:

Delbert W. Linn, President, Noble County PTABOA

Kim Miller, Noble County Assessor

Kenneth Stump, Member, Noble County PTABOA

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

| | | |
|-------------------------|---|-----------------------------------|
| FRATERNAL ORDER OF |) | |
| EAGLES, #2455, |) | Petition No.: 57-002-02-2-8-00002 |
| |) | |
| Petitioner |) | |
| |) | County: Noble |
| v. |) | |
| |) | Township: Albion |
| NOBLE COUNTY PROPERTY |) | |
| TAX ASSESSMENT BOARD OF |) | Parcel No: 14-100650-00 |
| APPEALS, |) | |
| |) | Assessment Year: 2002 |
| Respondent |) | |

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

November 17, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review (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:
Whether the Petitioner qualifies for 100% exemption from property taxation.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, the Fraternal Order of Eagles filed a Form 132, Petition for Review of Exemption, for the 2002 tax year. The Form 132 was filed on December 9, 2002. The determination of the PTABOA was issued on November 22, 2002. The PTABOA determined that the subject property is 25% exempt and 75% taxable.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on May 21, 2003 in Albion, Indiana before Joseph Stanford, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2. The Administrative Law Judge did not view the property.

4. The following persons were present at the hearing:

For the Petitioner:

Marc H. Fisher, Secretary, Fraternal Order of Eagles #2455

For the Respondent:

Delbert W. Linn, President, Noble County PTABOA

Kim Miller, Noble County Assessor

Kenneth Stump, Member, Noble County PTABOA

5. The following persons were sworn in as witnesses and presented testimony:
For the Petitioner:
 Marc H. Fisher
For the Respondent:
 Delbert W. Linn
 Kim Miller
 Kenneth Stump
6. Neither the Petitioner nor the Respondent submitted exhibits at the hearing.
7. The following items are officially recognized as part of the record of proceedings:
 Board Exhibit A – Form 132 petition and related attachments.
 Board Exhibit B – Notice of hearing on petition.

Jurisdictional Framework

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

State Review and Petitioner's Burden

9. 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).
10. 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.]

11. 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.]
12. 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.]
13. 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

14. 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.
15. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.

16. 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

17. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
18. 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).
19. 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.
20. 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)).

21. 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).
22. 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 Issue

Whether the Petitioner qualifies for 100% exemption from property taxation

23. The Petitioner contends that it qualifies for 100% exemption from property taxation.
24. The Respondent exempted a portion of the building on the basis of charitable use. The Respondent contends the subject property does not qualify for a 100% exemption.
25. The applicable rules governing this Issue are:
 - Ind. Code § 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.
 - Ind. Code § 6-1.1-10-36.3(a)**
For purposes of this section, property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those stated purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.

26. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The Petitioner makes donations and contributions to charity (Fisher testimony).
 - B. The subject building is used mostly for dues paying members of Fraternal Order of Eagles, which is a social club (Id).
 - C. The subject building's social room is sometimes rented to outside users for gatherings and parties. This accounts for approximately 10% of the use (Id).
 - D. The Petitioner allows courthouse employees to use its parking lot at no charge (Id).
 - E. The subject building has a bar and serves food (Id).

Analysis of this issue

27. The PTABOA contends that Fraternal Order of Eagles has failed to meet its burden that it qualifies for a 100% exemption from property taxation. The PTABOA argues that the appropriate examination in determining whether an organization qualifies for exemption is predominant use of the property. *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E. 2d 1257 (Ind. Tax 2002) (*Moose II*). The PTABOA also argues that most of the Petitioner's activities do not qualify as educational and charitable, but are social in nature.
28. The PTABOA is correct. As was reflected in the statements of the Supreme Court in *Moose II*, the predominant use test that is codified in Ind. Code § 6-1.1-10-36.3 is the appropriate test for determining whether a property should be exempt.
29. The Petitioner failed to show that the property is used for an exempt purpose 100% of the time. While the Petitioner may donate a portion of its income to charity, this fact alone does not qualify it for property tax exemption. If donation to charity were the only requirement to obtain exemption from property taxation, nearly every individual and corporation in existence would be exempt. Again, to qualify as charitable, a petitioner

must show that its use of the property in question provides a present benefit to the general public as a whole. A noble or worthwhile purpose is not sufficient to qualify. Accomplishment of a public purpose must be shown. *NAME*, 671 N.E. 2d at 220, 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)). In the case at bar, the property owned by Fraternal Order of Eagles is primarily used for recreational and social purposes. Therefore, the subject property cannot qualify for 100% exemption from property taxation.

Summary of Final Determination

30. For the reasons set forth, it is determined that the property owned by Fraternal Order of Eagles does not qualify for 100% property tax exemption. There is no change in the exemption originally awarded by the Noble County PTABOA.

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.