

REPRESENTATIVES FOR PETITIONER: None

REPRESENTATIVES FOR RESPONDENT: F. John Rogers, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

FORT WAYNE NAVY CLUB,)	Petition Nos.: 02-074-00-2-8-00022A
)	02-074-01-2-8-00023
Petitioner)	
)	County: Allen
v.)	
)	Township: Wayne
ALLEN COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	Parcel No: 92-3542-0187, 91-4299
APPEALS,)	
)	Assessment Years: 2000, 2001
Respondent)	

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

August 18, 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 exemption from property taxation.

Procedural History

- Pursuant to Ind. Code § 6-1.1-11-7 Fort Wayne Navy Club filed Form 132, Petitions for Review of Exemption, for the 2000 and 2001 tax years. The Form 132 petitions were filed on September 27, 2002. The determinations of the PTABOA were issued on August 30, 2002. The PTABOA determined that the subject property is 100% taxable.

Hearing Facts and Other Matters of Record

- Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on April 30, 2002 in Fort Wayne, Indiana before Joseph Stanford, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2. In lieu of appearing at the hearing, a representative for Fort Wayne Navy Club contacted county officials prior to the hearing and submitted evidence to the county. At the hearing, in accordance with Fort Wayne Navy Club's request, the county submitted said evidence for Fort Wayne Navy Club. The Administrative Law Judge did not view the property.

- The following persons were present at the hearing:

For the Respondent:

Pat Love, County Assessor

Kimberly Klerner, PTABOA secretary

F. John Rogers, Attorney for PTABOA

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

For the Respondent:

Pat Love

Kimberly Klerner

- The following exhibits were presented:

For the Petitioner:

Petitioner's Ex. 1 – 2001 Form 990-T, Exempt Organization Business Income Tax Return.

Petitioner's Ex. 2 – Notice of Hearing on Petition.

Petitioner's Ex. 3 – General Ledger Trial Balance as of December 31, 2001.

Petitioner's Ex. 4 – 2003 Business Tangible Personal Property Return.

Petitioner's Ex. 5 – 2001 Indiana Not-For-Profit Organization Income Tax Return.

Petitioner's Ex. 6 – 2001 Indiana Not-For-Profit Organization's Annual Gross Income Tax Report.

Petitioner's Ex. 7 – 2001 Indiana Department of Revenue Proposed Assessment.

Petitioner's Ex. 8 – 2001 Form 990, Return of Organization Exempt From Income Tax.

For the Respondent:

None submitted

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

Board Ex. A – Form 132 petitions and related attachments.

Board Ex. B – Notices of hearing on petitions.

Jurisdictional Framework

8. The Board is authorized to issue this final determination pursuant to Ind. 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 exemption from property taxation

23. The Petitioner contends that it qualifies for exemption from property taxation.
24. The Respondent contends that Fort Wayne Navy Club has not met its burden of proof that it qualifies for 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. Fort Wayne Navy Club is recognized as a not-for-profit corporation by the federal government under § 501(c)(19) of the Internal Revenue Service Code (Pet. Ex. 1).
 - B. The subject property consists of a bar room, two meeting rooms, and an upstairs storage area (Board Ex. A).
 - C. The subject property is used for member meetings. Fort Wayne Navy Club has approximately 130 members. Members must be regular Navy, Marine, or Coast Guard (Board Ex. A).
 - D. Fort Wayne Navy Club also sponsors a dance and golf outing during the year (Board Ex. A).

Analysis of this issue

27. The PTABOA contends that Fort Wayne Navy Club has failed to meet its burden that it qualifies for exemption from property taxation. The Petitioner submitted only income and expense data. The PTABOA argues that the appropriate examination in determining whether an organization qualifies for exemption is predominant use of the property, not income. *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*).
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 meets the predominant use test. Moreover, the Petitioner failed to show that the use of the property even qualifies as charitable. 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. *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)). In the case at bar, the Fort Wayne Navy Club has not shown that it provides a present benefit to the general public as a whole. Therefore, the subject property cannot qualify for exemption from property taxation.

Summary of Final Determination

30. For the reasons set forth, it is determined that the property owned by Fort Wayne Navy Club does not qualify for property tax exemption. The property remains 100% taxable.

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.