

REPRESENTATIVES FOR PETITIONER: John Klumpe, Chairman, Genesis Foundation.

REPRESENTATIVES FOR RESPONDENT: Janine Chrisman, President, Porter County PTABOA; Shirley LaFever, Porter County Assessor; Lindy Wilson, Deputy County Assessor.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

GENESIS FOUNDATION)	Petition No.: 64-026-02-2-8-00001
)	
Petitioner)	County: Porter
)	
v.)	Township: Center
)	
PORTER COUNTY PROPERTY)	Personal Property
TAX ASSESSMENT BOARD OF)	
APPEALS,)	
)	Assessment Year: 2002
Respondent)	
)	

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

December 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 personal property owned by the Genesis Foundation should be tax exempt.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Genesis Foundation (Foundation) filed a Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The underlying Form 136 Application for Property Tax Exemption was filed on May 15, 2002. The PTABOA issued its determination via the Form 120 Notice on Exemption Application on February 6, 2003. The Foundation filed the subsequent Form 132 petition on February 18, 2003.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was conducted on October 1, 2003 in Valparaiso, Indiana, before Ellen Yuhan, 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: John Klumpe, Chairman, Genesis Foundation

 - For the Respondent: Janine Chrisman, President, Porter County
PTABOA
Shirley LaFever, Porter County Assessor
Lindy Wilson, Deputy Assessor, Porter County.

5. The following persons were sworn in as witnesses and presented testimony:
For the Petitioner: John Klumpe, Chairman, Genesis Foundation

For the Respondent: Janine Chrisman, President, Porter County PTABOA
Shirley LaFever, Porter County Assessor
Lindy Wilson, Deputy Assessor, Porter County.
6. At the hearing, the Petitioner presented the following exhibits:
Petitioner's Exhibit 1 – Letter from the Internal Revenue Service
Petitioner's Exhibit 2 – Federal Tax Returns for 2002
Petitioner's Exhibit 3 – Articles of Incorporation
Petitioner's Exhibit 4 – Certificate of Incorporation.
7. The following additional items are officially recognized as part of the record of proceedings:
Board Exhibit A – Subject Form 132 Petition with attachments.
Board Exhibit B – Subject Notice of Hearing on Petition (Form 117).
8. The personal property at issue is located at 450 Vale Park Road, Valparaiso, (Center Township, Porter County).¹ The Administrative Law Judge did not view the property.
9. The Porter County PTABOA denied the exemption because the Petitioner failed to appear at the PTABOA hearing. The assessed value on appeal was \$1,820.

Jurisdictional Framework

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

¹ At the time of filing, the property was located at 915 Pheasant Run Circle, Porter, IN (Westchester Township, Porter County).

State Review and Petitioner's Burden

11. 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
12. 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998).
['Probative evidence' is evidence that serves to prove or disprove a fact.]
13. 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 Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
14. 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 Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
15. 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 Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 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 matter officially noticed in the proceeding, that is contrary to the petitioner's position.]

Constitutional and Statutory Basis for Exemption

16. 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.
17. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
18. 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

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

20. The courts of some states construe constitutional and statutory tax exemption 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).
21. 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.
22. 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)).
23. 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).
24. 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 the Issue

Whether the personal property owned by the Genesis Foundation should be tax exempt.

25. The Petitioner claims the personal property should be tax-exempt.
26. The PTABOA denied the application for exemption because the Petitioner did not appear at the PTABOA hearing.
27. The applicable rules governing the issue are:

Ind. Code § 6-1.1-10-16: Land and buildings used for educational, literary, scientific, religious or charitable purposes

- (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.
- (e) Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.

Ind. Code § 6-1.1-10-36.3: Property used or occupied for one or more stated purpose.

- (a) For purposes of this section, property is predominantly used or occupied for one (1) or more stated purpose, if it is used or occupied for one (1) or more of those 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.
- (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 person other than 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.

(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 or more of the stated purposes.

28. Evidence and testimony considered particularly relevant to this determination includes the following:

- a. The Petitioner claims the corporation is a 501 (c) (3) not-for-profit charitable organization that provides down payment funds to low and moderate-income individuals. *Klumpe testimony. Petitioner's Exhibit 1.*
- b. The Foundation does not own or purchase the properties. The Foundation does not receive any government funds; the funds come from the sellers of the homes who refund the gifted down payments and an additional processing fee of \$300. The processing fee covers administrative costs and overhead. *Klumpe testimony.*
- c. For 2002, the Chairman, President and Director received no compensation. *Klumpe testimony. Petitioner's Exhibit 2, page 4.*
- d. The Foundation helps purchasers qualify for FHA loans. It opens up housing availability to an increased buying group that otherwise would not be able to purchase homes. *Klumpe testimony.*
- e. There are government programs that have gifted down payment programs under their grant programs, but they are generally pretty restrictive and generally geographically based. The Foundation basically supplements those programs by helping people who do not qualify or for whatever reason fall outside the parameters of those grants. *Klumpe testimony.*

- f. The Foundation also acts as a resource to other faith-based or community based organizations, such as Habitat for Humanity, Haven House, the Salvation Army, etc. *Petitioner's Exhibit 2, page15.*

Analysis of the Issue

29. The Petitioner seeks an exemption for personal property based on Ind. Code 6-1.1-10-16.
30. The Foundation is an Indiana non-profit corporation and tax exempt under Internal Revenue Code 501 (c)(3).
31. As stated previously, the grant of federal or state income tax exemption does not automatically entitle a taxpayer to property tax exemption. For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Therefore, the Board must address the question of whether the personal property is owned and used for an exempt purpose.
32. The Foundation is not organized or operated for profit. It is operated for the promotion of social welfare, that is, it is engaged in promoting the common good and general welfare of the community by bringing civic betterments and social improvements.
33. The Foundation presented testimony and evidence that it increases opportunities for low to moderate-income individuals to purchase homes; the Foundation essentially supplements the more restrictive government programs that exist. The Foundation also acts as a resource for other charitable organizations.
34. The Foundation showed that its revenue is from direct public support and that 98% of the revenue is used for program services. No profit was shown on the

financial statements and there was no benefit to any for-profit parties. In fact, no compensation was shown for the officers of the Foundation.

35. The Foundation has proven that it is a charitable organization entitled to property tax exemption. The personal property at issue is owned and used by the Foundation for its exempt purpose.
36. For all the above reasons, the personal property at issue is determined to be 100% tax exempt. There is a change as a result.

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

Commissioner, 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.