

**STATE OF INDIANA  
Board of Tax Review**

GLORIOUS CHURCH OF GOD,	)	On Appeal from the Marion County
	)	Property Tax Assessment Board
Petitioner,	)	of Appeals
	)	
v.	)	Petition for Review of Exemption
	)	Form 132
MARION COUNTY PROPERTY TAX	)	Petition No. 49-500-96-2-8-00049*
ASSESSMENT BOARD OF APPEALS,	)	
	)	
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 the land and improvements owned by Glorious Church of God qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for religious purposes.

**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 be considered a finding of fact.

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\* The petition number has been updated. The original petition number was 96-492-49.

2. Pursuant to Ind. Code § 6-1.1-11-3, Glorious Church of God (Petitioner) filed an application for property tax exemption with the Marion County Board of Review (BOR) on May 10, 1996. The BOR denied the application on September 27, 1996, and gave the Petitioner proper notice of denial.
3. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Form 132 petition seeking a review of the BOR action by the State. The Form 132 petition was filed October 23, 1996.
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 7, 1997, before Hearing Officer Kay Schwade. Testimony and exhibits were received into evidence. Carlos. L. Burdine, pastor, represented the Petitioner. Although formal written notice was provided, no one appeared on behalf of the BOR.
5. At the hearing, the subject Form 132 petition and attachments were 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 Exhibit 1 – Articles of Incorporation  
Petitioner Exhibit 2 – Copy of Form 136 petition  
Petitioner Exhibit 3 – Expense report for 1995

6. The subject property is located at 8300 Bluff Road, Indianapolis, Indiana, Marion County, Perry Township.
7. The Hearing Officer did not view the property.

### **Administrative Proceedings**

8. Glorious Church of God is a recognized Indiana not-for-profit corporation. The

subject property is an empty lot that was purchased by the Petitioner in 1987 as a future building site.

9. Due to financial constraints, the building project was postponed.
10. Three years previous to this appeal, the Petitioner entered into an agreement to have the land farmed. In return for use of the land, the Petitioner receives half of the grain profit. The property will continue to be used in this manner until such time as building funds become available.
11. At the time of the hearing, the Petitioner was no longer actively engaged in fundraising projects for the building costs.

### **Conclusions of Law**

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

#### **A. Burden In General**

2. The courts have long recognized that in the administrative review process, the State is clothed with quasi-judicial power and the actions of the State are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State has the ability to decide the administrative appeal based upon the evidence presented.
3. 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).

4. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
5. If the taxpayer is not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
6. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
7. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.

#### **B. Constitutional and Statutory Basis for Exemption**

8. 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.
9. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, exemption is claimed 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 educational or religious purposes.

10. 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**

11. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
12. 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).
13. Strict construction construes exemption from the concept of the taxpayer citizen. 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*, 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.
14. 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. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 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)).

15. 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).
16. The term “religious” generally has reference to man’s relationship and belief in a supernatural or superhuman being that exercises power over human beings by imposing rules of conduct with future rewards and punishments. See *City Chapel Evangelical Free Inc. v. City of South Bend*, 744 N.E. 2d 443 (Ind. 2001)(“worship” is the act of paying divine honors to the Supreme Being); *Grutka v. Clifford*, 445 N.E. 2d 1015 (Ind. App. 1983)(ecclesiastical matters are those which concern doctrine, creed, or form of worship of the church); *Minersville School District v. Gobitis*, 108 F. 2d 683 (3d Cir. 1939); *McMasters v. State of Oklahoma*, 21 Okla. Crim. 318, 207 P. 566 (Okla. Crim. App. 1922).

#### **D. Conclusions Regarding the Exemption Claim**

17. Indiana Code 6-1.1-10-16(d) states the following:
  - A tract of land is exempt from property taxation if:
    - (3) not more than three (3) years after the property is purchased, and for each year after the three (3) year period, the owner demonstrates substantial progress towards the erection of the intended building and use of the tract for the exempt purpose. To establish that substantial progress is being made, the owner must prove the existence of factors such as the following:
      - (A) Organization of and activity by a building committee or other oversight group.

- (B) Completion and filing of building plans with the appropriate local government authority.
- (C) Cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin within three (3) years.
- (D) The breaking of ground and beginning of actual construction.
- (E) Any other factor that would lead a reasonable individual to believe that construction of the building is an active plan and that the building is capable of being completed within six (6) years considering the circumstances of the owner.

18. The subject property was purchased by the Petitioner in 1987. As of the hearing date, little obvious progress has been made. There is no indication that any of the steps mentioned above have been taken.
19. In fact, the testimony indicated that the land is being used for another purpose entirely. The agreement to farm the land and the cessation of fundraising activities both imply that the plans had been put on hold.
20. In addition, none of the evidence presented shows any progress has been made towards construction of a building on the subject property.
21. Given the above, the Petitioner has failed to meet the qualifications of Indiana Code 6-1.1-10-16(d). The appeal is denied and the subject property is 100% subject to property taxation.

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.

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Chairman, Indiana Board of Tax Review