

REPRESENTATIVES FOR PETITIONER: John Galvin, President/Executive Director, Historic Madison, Inc.

REPRESENTATIVES FOR RESPONDENT: E. Gail Sims, Jefferson County Assessor, Elbert Hinds, PTABOA president

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

HISTORIC MADISON, INC.)	Petition No.: 39-011-02-2-8-00001
)	
Petitioner)	County: Jefferson
)	
v.)	Township: Madison
)	
JEFFERSON COUNTY)	Parcel No.: 011-0411200
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS And)	Assessment Year: 2002
MADISON TOWNSHIP,)	
)	
Respondents)	

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

[September 3, 2002]

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 1 – Whether real property owned by Historic Madison, Inc. qualifies for exemption from property taxation pursuant to Ind. Code § 6-1.1-10-16 as educational.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 John Galvin, President/Executive Director filed a Form 132 on behalf of Historic Madison, Inc. petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on February 11, 2002. The determination of the PTABOA was issued on January 15, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on June 4, 2002 in Madison, 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. John Galvin, President/Executive Director, Historic Madison, Inc.

For the Respondent:

Mrs. E. Gail Sims, Jefferson County Assessor

Mr. Elbert Hinds, PTABOA president

5. The following persons were sworn in as witnesses and presented testimony:
 - For the Petitioner:
 - Mr. John Galvin, President/Executive Director, Historic Madison, Inc.
 - For the Respondent:
 - Mrs. E. Gail Sims, Jefferson County Assessor
 - Mr. Elbert Hinds, PTABOA president
6. The following exhibits were presented:
 - For the Petitioner:
 - Petitioner's Exhibit A – A copy of Ind. Code § 6-1.1-10-18 Not-for profit corporations promoting fine arts.
 - Petitioner's Exhibit B – A copy of the educational flyer on Paulownia Trees.
7. The following additional items are officially recognized as part of the record of proceedings:
 - A. A copy of the Form 132.
 - B. A copy of the Notice of Hearing, dated 5/1/02.
 - C. A copy of the list of witnesses and exhibits provided by the Jefferson County Assessor on May 21, 2002.
8. The parties stated for the record that they are waiving the fifteen (15) day notice of “lists of witnesses and exhibits”. The County provided a list of witnesses and exhibits for the Indiana Board of Tax Review and the Petitioner. The Petitioner did not provide such a list, but as stated previously, the County waived the list of witnesses and exhibits from the Petitioner.

Jurisdictional Framework

9. 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.

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

State Review and Petitioner's Burden

11. 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).
12. 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.]
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 Bd. of Tax Comm'rs*, 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 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.]
15. 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).

16. 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' 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.]

Constitutional and Statutory Basis for Exemption

17. 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.
18. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
19. 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

20. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
21. 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).
22. 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.
23. 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)).
24. 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).

25. 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 Issues

ISSUE 1 – Whether the real property owned by Historic Madison, Inc. qualifies for exemption from property taxation pursuant to Ind. Code § 6-1.1-10-16 as educational.

26. The Petitioner contends that the subject land should be exempt from property taxation under Ind. Code § 6-1.1-10-16 for educational purposes.
27. Further, upon more research the Petitioner contends that the property may be better suited to Ind. Code § 6-1.1-10-18, not-for-profit corporations supporting fine arts.
28. The Respondent contends that the subject land does not fall under Ind. Code §6-1.1-10-16, because the preservation of land does not meet the criteria of educational, literary, scientific, religious or charitable purposes.
29. The applicable statutes governing this Issue are:

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

- (c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:
- (1) a building which is exempt under subsection (a) or (b) is situated on it; and
 - (2) the tract does not exceed:
 - (A) fifty (50) acres in the case of :
 - (i) an educational institution; or
 - (ii) a tract that was exempt under this subsection on March 1, 1987; or
 - (B) fifteen (15) acres in all other cases.

- (d) A tract of land is exempt from property taxation if:
 - (1) it is purchased for the purpose of erecting a building which is to be owned, occupied, and used in such a manner that the building will be exempt under subsection (a) or (b);
 - (2) the tract does not exceed:
 - (A) fifty (50) acres in the case of:
 - (i) an educational institution; or
 - (ii) a tract that was exempt under this subsection on March 1, 1987; or
 - (B) fifteen (15) acres in all other cases; and
 - (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 the 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.

Ind. Code § 6-1.1-10-18, Not-for-profit corporations promoting fine arts.

- (a) Tangible property is exempt from property taxation if it is owned by an Indiana not-for-profit corporation which is organized and operated for the primary purpose of coordinating, promoting, encouraging, housing, or providing financial support to activities in the field of fine arts.
- (b) For purposes of this section, the field of fine arts includes, but is not limited to, the following art forms:
 - (1) Classical, semi-classical, or modern instrumental and vocal music;
 - (2) Classical dance, including ballet, modern adaptations of formal dance, and ethnic dance;
 - (3) Painting, drawing, and the graphic arts;
 - (4) Sculpture;
 - (5) Architecture;
 - (6) Drama and musical theater

30. Evidence and testimony considered particularly relevant to this determination include the following:
- A. Historic Madison is a legal not-for-profit entity legally organized under State Statutes in the State of Indiana, December 23, 1960. Primarily, Historic Madison works with the preservation of the architecture, as well as landscaping and scenic view sheds. (Galvin Testimony).
 - B. Historic Madison provides services, demonstrated by examples of preservation and restoration, to educate the general public about the knowledge of the history, architecture, artifacts, and landscape that goes along with making the area of Madison a historic district, important nationally to the State and the community of Madison. (Galvin Testimony).
 - C. The subject property is deeded to Historic Madison and there are no improvements on the site. The property has been donated to Historic Madison for the protection of the Windle historic home and for the preservation of the view shed of the Ohio River. The property is adjacent to the Windle home and there is no outlook for improvements to be built on the property. The site is in the 100 year flood plain and the City of Madison will not allow structures to be built on the subject property. There are Paulownia Trees located on the site that are rare to Indiana and the City of Madison has a moratorium that no trees can be cut or harvested in the city area. Adjacent property is just as important as the historic property itself in terms of property preservation. (Galvin Testimony & Petitioner's Ex. B).
 - D. There are many national examples of conservatories and national trust properties that are acquired to protect view sheds and there are some regulations and statutes that allow these properties to be tax exempt gifts and deductions. The view shed of the Ohio River area and the communities is extremely important for the development of the riverfront and the community and attributes to a greater quality of life in the City of Madison. (Galvin Testimony)
 - E. The statute cited Ind. Code § 6-1.1-10-16, "educational" should be looked at in a broader view, in the case of Historic Madison, because of the preservation and restoration aspect the entity provides to the general public. (Galvin Testimony).
 - F. After further investigation, Ind. Code § 6-1.1-10-18 (a)(5) perhaps provides a clearer picture of what Historic Madison offers. Historic Madison offers the preservation of

the historic architecture, as well as landscaping and scenic view sheds of the area. For exempt purposes this statute may be more appropriate. (Galvin Testimony).

- G. The Jefferson County PTABOA based the denial of the exemption on the limited information provided by Historic Madison for the subject property. The County contends that “enhancement of property” does not qualify as part of the criteria listed under Ind. Code § 6-1.1-10-16, educational, literary, scientific, religious or charitable purpose. (Sims Testimony and Hinds Testimony).

Analysis of ISSUE 1

31. The Petitioner bears the burden of proving that the property is entitled to the exemption within the statute under which the exemption is being claimed.
32. The Petitioner claimed exemption under Ind. Code § 6-1.1-10-16 as educational.
33. The property in question is vacant land. There are no plans to build on the property. In fact, according to the Petitioner no structures can be built on the property.
34. The property was donated to the Petitioner for the protection of the Windle historic home and for preservation of the view shed of the Ohio River.
35. Ind. Code § 6-1.1-10-16 provides an exemption for land if a building that is exempt is situated on it, or if the land is purchased for the purpose of erecting a building that will be exempt. The Petitioner did not show how the property in question fit the provisions of Ind. Code § 6-1.1-10-16 when no improvements are situated on the land nor are any being planned.
36. At the hearing, the Petitioner stated that Ind. Code § 6-1.1-10-18 might be better suited for the Petitioner. This section exempts property of a not-for-profit corporation organized and operated for the primary purpose of coordinating, promoting, encouraging, housing, or providing financial support to activities in the field of fine arts. The Petitioner points to

architecture as one of the listed fields of fine arts. Again, Petitioner fails to demonstrate how the vacant property serves or supports this function.

37. The Petitioner did not present any evidence to show how the property in question fits the provisions of Ind. Code § 6-1.1-10-18.

Summary of Final Determination

38. The Petitioner has the burden of proving that it is entitled to the exemption claimed. The Petitioner failed to meet its burden. The property in question is subject to taxation.

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.