

REPRESENTATIVES FOR PETITIONER: Derrick Pointer, Trustee Chairman

REPRESENTATIVES FOR RESPONDENT: Thomas O’Keefe, Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

Household of Israel Temple of Jesus Christ, Inc.,)	Petition No.: 45-001-92-2-8-00108
)	
Petitioner)	County: Lake
)	
v.)	Township: Calumet
)	
Lake County Board of Review,)	Parcel Nos.: 25-43-237-19
)	25-43-237-20
Respondent)	25-43-237-22
)	25-43-237-23
)	25-43-237-24
)	
)	Assessment Year: 1992

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

September 16, 2003

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 is:
Whether the property owned by Household of Israel Temple of Jesus Christ, Inc. qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-3, Household of Israel Temple of Jesus Christ, Inc. (Petitioner) filed five (5) Applications for Property Tax Exemption, Form 136, with the Lake County Auditor. The Form 136 applications were filed on October 20, 1994. The Lake County Board of Review (County Board) denied the applications and gave the Petitioner notice on December 23, 1994. The Form 136 applications show the year filing for as 1992.
3. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed one (1) Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of County Board action. The Form 132 was filed December 30, 1994. The Form 132 lists all of the parcels and shows March 1, 1994 as the date of assessment.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 12, 1996 in Crown Point, Indiana before David Stephani, the duly appointed Hearing Officer.
5. The following persons were present at the hearing:

For the Petitioner:

Derrick Pointer, Trustee Chairman/Minister

Marjorie V. Walls, Treasurer

Evelyn C. Pointer, Assistant Treasurer

Darrell J. Walls, Minister
Warren Walls, Minister
Adrian D. Walls, Sabbath Day teacher
Vikki D. Walton, Elder

For the Respondent:

Thomas P. O’Keefe, Deputy Assessor

6. At the hearing, the subject Form 132 petition was made a part of the record and labeled Board Exhibit A. The Notice of Hearing was made a part of the record as Board Exhibit B. In addition, the following exhibits were submitted to the Board:

Exhibit 1 – Packet of information including: Certificate of Incorporation; Articles of Amendment to the Articles of Incorporation; financial statements; list of activities; and other pertinent documentation including the Quit Claim Deed.

Exhibit 2 – A letter to the Lake County Board of Review and copies of Required Information for Property Tax Exemption (State Form 5748).

Exhibit 3 – Photos of the church and subject properties.

7. Although the Form 132 petition shows the assessment date of the appeal as March 1, 1994, the Form 136 applications clearly show the exemption being filed for 1992. Since the exemption is sought for 1992, it is clearly the Petitioner’s intent to appeal for 1992.
8. The subject properties are located adjacent to the church on Arthur Street in Gary, Indiana, Calumet Township, Lake County. The properties contain the church flower garden, picnic tables, and playground area for children. *Exhibit 2.*

Jurisdictional Framework

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

State Review and Petitioner's Burden

10. 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).
11. 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.]
12. 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.]
13. 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.]
14. 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

15. 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.
16. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
17. 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

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

20. 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.
21. 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)).
22. 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).
23. 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 property owned by Household of Israel Temple of Jesus Christ, Inc. qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16.

Analysis of Issue

29. Before exploring the question of whether the Petitioner meets the requirements set forth under Ind. Code § 6-1.1-10-16, the Board must first determine whether the Petitioner has complied with the statutory requirements for filing the exemption application set forth under Ind. Code § 6-1.1-11.
30. The application must be filed in the same year that property tax exemption is sought. The Petitioner is seeking exemption for the 1992 year. In order to claim the exemption for 1992, the Petitioner had to file the applications on or before May 15, 1992. The applications were filed on October 20, 1994. More than two years after the deadline for claiming an exemption for 1992. Clearly, the Petitioner did not follow the statutory procedures for obtaining the exemption.
31. Furthermore, the Petitioner was not the owner of the property on the March 1, 1992 assessment date. Derrick and Evelyn Pointer did not purchase the property until June of 1992. Neither the Petitioner, nor Derrick and Evelyn Pointer, owned the property on the assessment date for which they are seeking exemption.
32. For all of the above reasons, the Petitioner is not entitled to an exemption for the 1992 year.
33. Even if it is assumed that the Petitioner was attempting to claim the exemption for the 1994 year, the applications were not timely filed. The applications had to be filed on or before May 15, 1994. The applications were filed on October 20, 1994. Further, the Petitioner did not own the property as of the March 1, 1994 assessment date. The property was deeded to the Petitioner on May 11, 1994. The Petitioner would not be entitled to an exemption for the 1994 year.

Summary of Final Determination

Whether the property owned by Household of Israel Temple of Jesus Christ, Inc. qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16.

34. The Petitioner has failed to comply with the statutory procedures for claiming the exemption for 1992. Therefore, the Petitioner has waived the exemption and the subject properties are 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.