

**STATE OF INDIANA
Board of Tax Review**

INDIANA COALITION ON HOUSING AND HOMELESS ISSUES, INC.,) On Appeal from the Marion County
) Property Tax Assessment Board
Petitioner,) of Appeals
)
v.) Petition for Review of Assessment
) Form 132
MARION COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS,) Petition No. 49-101-01-2-8-10078
)
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 the Indiana Coalition on Housing and Homeless Issues, Inc., qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable 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.

2. Pursuant to Ind. Code § 6-1.1-11-3, Indiana Coalition on Housing and Homeless Issues, Inc. (Indiana Coalition), filed an application for property tax exemption with the Marion County Property Tax Assessment Board of Appeals (PTABOA) on May 16, 2001. The PTABOA denied the application on August 24, 2001, and gave Indiana Coalition proper notice of denial.

3. Pursuant to Ind. Code § 6-1.1-11-7, Indiana Coalition filed a Form 132 petition seeking a review of the PTABOA action by the Board of Tax Review. The Form 132 petition was filed September 21, 2001.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 10, 2002 before Hearing Officer Alyson Kunack. Testimony and exhibits were received into evidence. Glenn Hubbard, office manager for Indiana Coalition, represented the Petitioner. Patsy Sharpe and Andrew Seiwert were present on behalf of the PTABOA.

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:

Respondent Exhibit 1 – Ind. Code § 6-1.1-11-1
Respondent Exhibit 2 – Ind. Code § 6-1.1-11-3
Respondent Exhibit 3 – Ind. Code § 6-1.1-11-3.5

6. The subject property is located at 324 West Morris Street, Indianapolis, Indiana, (Marion County, Center Township).

7. The Hearing Officer did not view the property.

Administrative Proceedings

8. Indiana Coalition is a Federally tax-exempt corporation that is an advocate for low-cost housing and homeless issues.
9. In June of 2001, Indiana Coalition hired an independent auditor to review its financial matters. In the process, it was discovered that Indiana Coalition was not exempt and needed to pay taxes on the subject property. It was at this point the original application for exemption was filed.

Conclusions of Law

1. The Board of Tax Review is the proper body to hear an appeal of the action of the PTABOA pursuant to Ind. Code § 6-1.1-15-3.

A. Burden in General

2. 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). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
3. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is

exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

4. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State Board is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State Board in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
5. 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).
6. 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. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State Board's final determination even though the taxpayer demonstrates flaws in it).

B. Constitutional and Statutory Basis for Exemption

7. 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.

8. 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.
9. In Indiana, the fact that a nonprofit entity owns the property under examination does not establish any inherent right to exemption. 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.

C. Basis of Exemption and Burden

10. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
11. 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).
12. 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)(*NAME*). 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.

13. 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)).
14. 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).
15. As a condition precedent to being granted an exemption under the charitable or educational purpose clause of the statute, 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 1247 (Ind. 1991)).

D. Conclusions Regarding the Exemption Claim

16. Indiana Coalition seeks property tax exemption under Ind. Code § 6-1.1-10-16 claiming the classification of charitable purpose.
17. Before exploring the question of whether Indiana Coalition meets the requirements set forth under Ind. Code § 6-1.1-10-16, the State Board must first determine whether Indiana Coalition statutorily complied with the requirements

and limitations regarding the filing of the exemption application set forth under Ind. Code § 6-1.1-11.

18. According to Ind. Code § 6-1.1-11-3(a), “The owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the auditor of the county in which the property is located. The application must be filed annually on or before May 15 on forms prescribed by the state board of tax commissioners.”
19. Indiana Coalition acknowledges that the application for exemption does not meet the statutory filing date established under Ind. Code § 6-1.1-11-3 to achieve an exemption for 2001¹. However, Indiana Coalition maintains that the petition is still valid for consideration. The State Board must disagree.
20. To repeat, an application for property tax exemption must be filed in the same year that property tax exemption is sought. Therefore, if Indiana Coalition wished to have an exemption in 2001, then Indiana Coalition was required to file an application for exemption on or before May 15, 2001. However, Indiana Coalition filed an application for exemption on May 16, 2001, requesting property tax exemption for 2001.
21. Ind. Code § 6-1.1-11-1 states: “An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with the statutory procedures for obtaining an exemption, he waives the exemption. If the exemption is waived, the property is subject to taxation.”
22. The Petitioner waived the exemption when it failed to comply with the statutory procedures for obtaining an exemption. *Dav-Con, Inc. v. State Board of Tax*

¹ Property taxes that are assessed and imposed for a year are due and payable in two (2) equal installments the following year (See Ind. Code § 6-1.1-22-9). Thus the taxes assessed and imposed in 2001 are due in 2002.

Commissioners, 644 N.E. 2d 192 (Ind. Tax 1994), *Kentron v. State Board of Tax Commissioners*, 572 N.E. 2d 1366 (Ind. Tax 1991).

23. In 2001, May 15 did not fall on a weekend, or State holiday. May 15, 2001 was a Tuesday. Therefore, the application for exemption was due on May 15, 2001.²
24. Thus the application for exemption was filed after the statutory deadline to achieve an exemption for 2001. Accordingly, this petition is denied.

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.

Chairman, Indiana Board of Tax Review

² Had May 15, 2001 fell on a weekend or a State holiday, the application for exemption would have been due on the next business day the Auditor's office was open.