

**STATE OF INDIANA
Board of Tax Review**

INDIANA COMMUNITY ACTION ASSOCIATION,)	On Appeal from the Marion County
)	Property Tax Assessment Board of
Petitioner,)	Appeals
)	
v.)	Petition for Review of Exemption, Form 132
)	
MARION COUNTY PROPERTY TAX ASSESSMENT BOARD OF REVIEW,)	Petition Nos. 49-101-01-2-8-10075
)	49-101-01-2-8-10076
)	
Respondent.)	Parcel Nos. 1095119
)	A131542
)	1095585

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, improvements, and personal property owned by Indiana Community Action Association (INCAA) qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for educational and 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, INCAA filed an application for property tax exemption with the Marion County Property Tax Assessment Board of Appeals (PTABOA) on May 11, 2001. The PTABOA denied the application on July 27, 2001, and gave INCAA proper notice of denial. The PTABOA determined all real estate and personal property to be 100% taxable.

3. Pursuant to Ind. Code § 6-1.1-11-7, INCAA filed a Form 132 petition seeking a review of the PTABOA action by the State. The Form 132 petition was filed August 24, 2001.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 20, 2001, before Hearing Officer Brian McKinney. Testimony and exhibits were received into evidence. INCAA was represented by Edward A. Geradot, Executive Director; Thomas R. Draper, Fiscal Manager; and Timothy E. Peterson, Attorney. Melissa Tetrick, Exemption Deputy, and Andrew P. Seiwert, Assistant Corporation Counsel, City of Indianapolis, represented the Marion County PTABOA.

5. At the hearing, the subject Form 132 petition was 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 exhibits were submitted as evidence:
Petitioner Exhibit A – 3 ring binder with attachments A, B, C, D, E, F, and H.
Petitioner Exhibit B – Financial and Compliance Audit for 1998.
Petitioner Exhibit C – Financial and Compliance Audit for 1999.
Petitioner Exhibit D – Financial and Compliance Audit for 2000.
Petitioner Exhibit E – INCAA summary of prior years accomplishments.

Respondent Exhibit A – a copy of *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E. 2d 218 (Ind. Tax 1996).

6. The subject property is located at 1845 & 1911 West 18th Street in Indianapolis. The subject property contains training classrooms and administrative offices of the Petitioner.
7. The Hearing Officer did not view the property.

Additional Facts

8. INCAA was incorporated in the early 1970's as a not-for-profit corporation when 23 not-for-profit agencies and one State of Indiana agency united in a common purpose.
9. According to Article I of INCAA's by-laws, the purposes of the organization is as follows:
 - (a) "To disseminate knowledge and information pertinent to all Indiana Community Action Agencies (CAP's), especially from National, Regional, and State offices.
 - (b) To promote unity and co-operation in planning, proposing and funding programs which can be state wide.
 - (c) To provide unity and power in dealing with the national, regional, and state offices that have impact on low-income people.
 - (d) To provide for continuing research relative to the causes, problems, and elimination of poverty.
 - (e) To join with other groups and organizations directed toward combating poverty in Indiana.
 - (f) To receive and administer funds to carry out such programs and activities as may be approved by its board of directors and to contract

and subcontract for special services, and facilities to assist in carrying out such programs;

(g) To solicit, receive, and utilize donations and grants of money, property or services from any individual, group, corporation or agency whether public or private, for the purpose set forth herein.”

10. To fulfill these goals, INCAA has three main activities:
 - (1) Assist low-income families, small communities and local officials to deal with water and wastewater problems affecting the poor and poverty levels.
 - (2) To provide weatherization assistance to households with income at or below 125% of the poverty level as defined by client fuel consumption and expenses.
 - (3) To provide training for all weatherization programs within the State of Indiana through the operation of a training facility and classrooms.

11. Weatherizing includes adding insulation, replacing furnaces, replacing hot-water heaters, carbon monoxide testing, and educating families how to conserve energy. The purpose of the weatherizing program is to help low-income families cope with energy costs during the winter by showing them how to conserve energy and making their homes more energy efficient.

12. Ninety percent (90%) of the funding of INCAA is from the federal and state government. The remaining 10% is from dues from members, training out of state, and also from utilities. Any excess funds (profit) are used to further the goals of INCAA or to improve the facilities.

13. INCAA weatherizes homes of families that are at or below 125% of the poverty level. The employees of INCAA or the contractors that actually perform the weatherization must be certified. INCAA offers free courses to obtain certification. INCAA is the only place in Indiana to obtain free certification.

14. Some of the courses offered by INCAA are: (a) furnace replacement and sizing criteria; (b) heating technician certification; (c) gas range testing and repair; and (d) carbon monoxide mitigation. There were 29 courses listed on the quarterly training schedule included in Petitioner Exhibit A.
15. The above courses, and all courses in weatherization are free of charge and offered quarterly. This is the only place in the State of Indiana to obtain this training for free. There are training centers like this in 4 other states, including Ohio and Pennsylvania. The training center in Indiana was the first.
16. Regulations state that the persons that actually perform the weatherizing must be certified. Regulations also set the income level.
17. INCAA has two other appeals pending. One is before the Tax Court and the other is pending before the State. The issue in the pending appeals is procedural. The merits of the exemption were not addressed in these pending appeals.
18. At the hearing, the Respondent objected to the introduction of Petitioner Exhibit B and Petitioner Exhibit C. Both of these exhibits were included in Petitioner Exhibit A, which was submitted with the Form 132 petition and to the Respondent. Accordingly, the Exhibits are accepted and the Respondent's objection is overruled.

Conclusions of Law

1. The State 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

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.
3. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator and relieving the taxpayer of his burden of proof would place the State 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.
4. To meet his burden, the taxpayer must present probative evidence in order to make a prima facia case. In order to establish a prima facia case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230,1233 (Ind. Tax 1998); *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

B. Constitutional and Statutory Basis for Exemption

5. 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.
6. Article 10, Section 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, the Petitioner seeks exemption 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 scientific purposes. Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt from property taxation if it were a building. Ind. Code § 6-1.1-10-16(e).

7. 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.

C. Basis of Exemption and Burden

8. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
9. 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).
10. 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.

11. 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)).
12. 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).
13. 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 1247 (Ind. 1991)).

D. Educational Purpose

14. For purposes of an educational exemption, the term “education” is not restricted to academic curricula or to ivy covered halls. *State Board of Tax Commissioners v. Fort Wayne Sport Club*, 147 Ind. App. 129, 258 N.E. 2d 874 (1970).
15. To qualify for an education purpose exemption, INCAA must show that it “provides at least some substantial part of the educational training which would otherwise be furnished by our tax supported schools.” *NAME*, 671 N.E. 2d at 221 (quoting *Fort Wayne Sport Club*, 147 Ind. App. at 140, 258 N.E. 2d at 882).

16. “An educational exemption is available to taxpayers who provide instruction and training equivalent to that provided by tax supported institutions of higher learning and public schools because to the extent such offerings are utilized, the state is relieved of its financial obligation to furnish such instruction.” *NAME*, 671 N.E. 2d at 222 (quoting *Fort Wayne Sport Club*, 147 Ind. App. at 140, 258 N.E. 2d at 881-82).
17. While INCAA does indeed educate individuals, INCAA must show how it “provides at least some substantial part of the educational training which would otherwise be furnished by our tax supported schools.” *NAME*, 671 N.E. 2d at 221.
18. INCAA falls short of this burden. There was no evidence or testimony presented to indicate they “provide at least some substantial part of the educational training which would otherwise be furnished by our tax supported schools.”

E. Charitable Purpose

19. Indiana courts broadly construe the term “charitable” as the relief of human want and suffering in a manner different from the everyday purposes and activities of man in general. *NAME*, 671 N.E. 2d at 221 (quoting *Indianapolis Elks Bldg. Corp. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 540, 251 N.E. 2d 673, 683 (Ind. App. 1969)).
20. “Charity” is not defined by statute, and the Tax Court looked to *Black’s Law Dictionary* to find the plain, ordinary, and usual meaning of “charity”; namely:

a gift for, or institution engaged in, public benevolent purposes. [It is a]n attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without

hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.

Raintree Friends, 667 N.E. 2d at 813 - 14 (quoting *Black's Law Dictionary*, 213 (5th ed. 1979).

21. Plainly, "charity" is not confined to relief for the destitute. It may be limited to one sex, church, city, or confraternity. *City of Indianapolis v. The Grand Master, etc. of the Grand Lodge of Indiana*, 25 Ind. 518, 522-23 (1865).
22. It is equally clear that "charity" must confer benefit upon the public at large or relieve the government of some of an obligation that it would otherwise be required to fill. *NAME*, 671 N.E. 2d at 221; *Foursquare Tabernacle*, 550 N.E. 2d at 854; *St. Mary's Medical Center*, 534 N.E. 2d at 279. Relieving the government from an obligation that it would otherwise be required to fill can be seen as a benefit to the public at large.
23. INCAA weatherizes homes of families at or below 125% of the poverty level free of charge. The purpose of weatherizing homes is to help low-income families reduce the energy bills by making their homes more energy efficient. Some of these families would not be able to afford the cost of energy otherwise.
24. At the hearing, the Petitioner testified that 20 to 40 percent of the activities of INCAA are charitable. The remaining activity of the Petitioner is educational. The Petitioner also stated that the educational supported the charitable. The Petitioner opined that one could not exist without the other.
25. The workers that perform the weatherizing must be certified, by regulation. INCAA is the only place in the State of Indiana to get certified free of charge. The free education services offered by INCAA are themselves charitable in that they are directly related to and actually essential to further the charitable purpose of providing "weatherization" to low-income families. It seems without the educational component, the charitable function would not be as effective as it is.

26. The definition used by the Tax Court in *Raintree Friends* identifies institutions engaged in benevolent purposes. INCAA is engaged in a benevolent purpose. Weatherizing the homes of low-income families free of charge is a benevolent purpose. Weatherizing is a service that the low-income families would not be able to afford otherwise.
27. The definition continues that it is an “attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources...” INCAA is providing a service to low-income families that they would be unable to provide for themselves.
28. The weatherizing makes energy costs more affordable, freeing up money that can be used by low-income families for other needs. In some cases, INCAA will replace a broken furnace, thereby providing heat to a family that may not have had any.
29. Finally, the definition concludes, “without hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.” INCAA is a not-for-profit Indiana corporation. They have no unrelated business income.
30. A charity must also confer a benefit to the public at large. While INCAA does not weatherize all homes, weatherizing homes of low-income families could be considered a benefit public at large. Weatherizing the homes of low-income families does make the cost of energy more affordable for those individuals.
31. INCAA also receives 90% of its funding from government sources. While this is not a requirement for a charitable exemption, it does support the notion of a charitable enterprise. The government funding also leads to the appearance that INCAA is relieving the government of some burden.

32. INCAA weatherizes homes of low-income families. In order to do this weatherization, the workers must be certified. INCAA offers courses to obtain certification. Without the certification there would be fewer people to do the weatherization, and as a result, fewer homes would be weatherized.
33. The educational component of INCAA in fact constitutes a charitable function. The educational function is necessary to continue the charitable function in an efficient manner.
34. The Respondents did not offer any evidence indicating INCAA receives any unrelated income, or any evidence indicating INCAA was receiving income for its training or "weatherization." Instead, the Respondent argued that INCAA was not education because they did not relieve the State of a burden by offering a course they would otherwise have to provide. The Respondent also argued that INCAA was not charitable because only 20% to 40% was charitable activity. The Respondent opined that the majority of the activities of INCAA were educational; therefore, INCAA does not qualify for a charitable exemption.
35. INCAA is clearly providing a benefit to low-income families in the State of Indiana. For this reason, and all those above, INCAA is granted a 100% exemption.

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