

REPRESENTATIVE FOR PETITIONER:

David L. Altman, President

REPRESENTATIVE FOR RESPONDENT:

John Swihart, Tax Exempt Deputy, Allen County Assessor's Office

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

INDIANA JOINT BOARD,	)	Petition No. 02-074-13-2-8-00001
	)	
Petitioner,	)	Parcel No. 02-12-13-260-030.000-074
	)	
v.	)	Allen County
	)	
ALLEN COUNTY ASSESSOR,	)	Wayne Township
	)	
Respondent.	)	2013 Assessment Year

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

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**January 15, 2014**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**INTRODUCTION**

1. Indiana Joint Board seeks to exempt its union hall from taxation alleging that the hall was used for educational and charitable purposes. But the training offered at the hall primarily served the private economic interests of Indiana Joint's members. And while Indiana Joint identified some activities that might arguably qualify as charitable, it did nothing to show that those activities predominated over vague union-related activities

such as holding meetings and conducting membership business. On those facts, Indiana Joint failed to prove that the subject property qualifies as exempt.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**HEARING FACTS AND OTHER MATTERS OF RECORD**

2. The subject property is located at 3422 Robinwood Drive in Fort Wayne. The Allen County Property Tax Assessment Board of Appeals (“PTABOA”) had previously granted the property an exemption. In December 2012, however, the PTABOA requested information from Indiana Joint regarding the property’s predominant use. The PTABOA therefore scheduled a hearing on the property’s continued eligibility for an exemption. Following that hearing, on March 1, 2013, the PTABOA determined that the property was 100% taxable for the 2013 assessment year. Seven days later, Indiana Joint filed a Form 132 petition with the Board seeking review of the PTABOA’s determination.<sup>1</sup>
3. On October 22, 2013, the Board’s designated administrative law judge, Jaime S. Harris, held a hearing. Neither she nor the Board inspected the property.
4. David Altman, president of Indiana Joint, and John Swihart, tax exemption deputy for the Allen County Assessor, were sworn as witnesses.
5. Indiana Joint did not present any exhibits.
6. The Allen County Assessor presented the following exhibits:
  - Exhibit 1: Hearing notice,
  - Exhibit 2: 2013 Property Record Card (“PRC”),
  - Exhibit 3: 2013 Form 132 Petition to the IBTR for Review of Exemption,
  - Exhibit 4: 2008 Form 120 Notice of Action on Exemption Application,
  - Exhibit 5: 2008 Form 136 Application for Property Tax Exemption,
  - Exhibit 6: Predominant use worksheet,

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<sup>1</sup> It was not readily apparent from Indiana Joint’s Form 132 petition that the PTABOA acted on its own motion rather than in response to an exemption application from Indiana Joint. The Board therefore issued a defect notice requiring Indiana Joint to provide a copy of its exemption application. Indiana Joint responded by providing a copy of an application that its president, David Altman, signed on March 19, 2013—18 days after the PTABOA denied the exemption and 11 days after Indiana Joint filed its Form 132 petition.

- Exhibit 7: December 18, 2012 PTABOA request for predominant use calculations,
- Exhibit 8: Predominant Use Worksheet prepared December 19, 2012,
- Exhibit 9: 2013 PTABOA hearing notice,
- Exhibit 10: 2013 Form 120, Notice of Action on Exemption Application,
- Exhibit 11: 2013 Form 136 Application for Property Exemption,
- Exhibit 12: Building Use in 2012,
- Exhibit 13: Indiana Joint Board Constitution, as amended June 2011,
- Exhibit 14: *Operating Engineers Local Union No.103 v. Allen County Assessor*, pet. nos. 02-074-09-2-8-00002 etc. (Ind. Bd. Tax Rev., Nov. 30, 2012)
- Exhibit 15: *Local Union 414 International Brotherhood of Teamsters v. Allen County Assessor*, pet. no. 02-074-08-2-8-00014 (Ind. Bd. Tax Rev., Dec. 3, 2012),
- Exhibit 16: *United Steelworkers, Local 14 v. Allen County Assessor*, pet. nos. 02-074-08-2-8-00014 etc. (Ind. Bd. Tax Rev., Jan. 14, 2013).

7. The following additional items are part of the record:

- Board Exhibit A: Hearing notice,
- Board Exhibit B: Form 132 petition,
- Board Exhibit C: Hearing sign-in sheet.

#### SUMMARY OF INDIANA JOINT’S CASE

8. Indiana Joint is a small, not-for-profit labor union affiliated with the Retail, Wholesale and Department Store Union, U.C.F.W. Indiana Joint owns the subject property, which contains its union hall. The hall has offices as well as storage and meeting space. Indiana Joint claims that it used the hall for educational and charitable purposes and that the property was therefore exempt from taxation under Ind. Code §6-1.1-10-16.<sup>2</sup> *Altman testimony; see also, Resp’t Ex. 13.*
9. Indiana Joint uses the hall to conduct its membership’s business, including holding meetings. Union officials also use the hall to train members on health and safety issues, on how to better understand the intent behind their labor agreements, and on handling

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<sup>2</sup>On its Form 132 petition, Indiana Joint checked “charitable IC 6-1.1-10-16” as the ground upon which it was claiming an exemption. *Bd. Ex. A.* But Mr. Altman also indicated that Indiana Joint had previously checked the box for “educational,” and he relied largely on the fact that Indiana Joint conducted training at the property in arguing for an exemption at the Board’s hearing. The Board therefore addresses whether the property was owned, occupied, and predominantly used for educational or charitable purposes.

workplace grievances. In addition, union officials help members complete healthcare and pension forms and assist them with other needs. *Altman testimony; see also Resp't Exs. 3, 6, 11.*

10. Indiana Joint and its members use the property exclusively. The property is located in a dangerous part of town, so it is unlikely anyone would want to rent it. *Altman testimony.*
11. Indiana Joint has used the property for the same purposes since buying it. The property was exempt until 2013, so it should continue to be exempt.

#### **SUMMARY OF THE ASSESSOR'S CASE**

12. The PTABOA granted the subject property an exemption in 2008. In late 2012, the PTABOA requested information from Indiana Joint about how it used its union hall. Indiana Joint responded by simply indicating that the hall consists of offices and a meeting room. Because the PTABOA was unclear about the hall's use, it scheduled a hearing. At that hearing, Indiana Joint's witnesses essentially testified that it used the hall solely for union business. The PTABOA therefore determined that the hall was taxable because it was not predominantly used for educational purposes. *Swihart testimony; Resp't. Exs. 4, 6-8, 9-10.*
13. Indiana Joint now claims that it uses the property to train union members and stewards. That training, however, is not analogous to courses offered by Ivy Tech or similar institutions and therefore does not support exempting the property from taxation. *Swihart testimony; Resp. Ex. 12.*
14. While the property's predominant use did not necessarily change between 2008 and 2013, Board decisions addressing exemptions for union-owned property have evolved. The Board recently held that simply using a property for union activities does not necessarily show a charitable or educational purpose. *Swihart testimony; Resp't Exs. 14-16.*

## ANALYSIS

15. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (citing Ind. Code §6-1.1-2-1). A taxpayer bears the burden of proving that its property qualifies for exemption. *Id.*
16. All or part of a building that is owned, occupied, and predominantly used for educational, literary, scientific, religious, or charitable purposes is exempt from taxation. See I.C. §6-1.1-10-16(a); I.C. §6-1.1-10-36. That exemption extends to the land on which the building is situated and to personal property contained therein. I.C. §6-1.1-10-16(c) and (e).<sup>3</sup> Indiana Joint claims that it used its union hall for educational and charitable purposes.
17. The exact meaning of what constitutes a charitable or educational purpose has spawned much litigation. Broadly speaking, courts have linked a taxpayer's right to exemption to the taxpayer's property being used to provide a public benefit. See, e.g., *Fort Wayne Sports Club, Inc. v. State Bd. of Tax Comm'rs*, 147 Ind. App. 129, 258 N.E.2d 874, 881 (1970) ("In our view, the well-established and obvious purpose for legislative conferral of tax exemptions requires a showing of some public benefit as a condition precedent to the granting of such exemption."). Thus, to show a charitable purpose, a taxpayer must demonstrate (1) the "relief of human want . . . manifested by obviously charitable acts different from the everyday purposes and activities of man in general," and (2) a benefit inuring to the public that is sufficient to justify the loss of tax revenue. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct. 2009), *reh'g den.* 914 N.E.2d 13 (Ind. Tax Ct. 2009) (quoting *Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm'rs*, 145 Ind. App. 522, 251 N.E.2d 673, 683 (1969)).

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<sup>3</sup> Indiana Code §6-1.1-10-16(e) exempts personal property if it is owned and used in such a manner that it would be exempt under subsection (a) if it were a building. Indiana Joint did not identify any personal property that it owned much less explain how that property was used.

18. Similarly, a taxpayer may demonstrate a public benefit by showing that its property is used to provide education that is the substantial equivalent of instruction offered in Indiana's tax-supported institutions. *Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n*, 853 N.E.2d 1262, 1266 (Ind. 2006). The closer the education provided at the property is to traditional educational programs offered in public schools, the more apparent the public benefit. A taxpayer, however, need not offer courses that are directly analogous to those taught in public schools; instead, the taxpayer's courses need merely be related to public school offerings. *Id.* (citing *Trinity Sch. of Natural Health v. Kosciusko County PTABOA*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003)). And the taxpayer need only relieve the state's burden of providing public education to "some limited extent." *Id.* (quoting *Trinity Sch.*, 799 N.E.2d at 1238). Nonetheless, "implicit in the requirement that education be the 'substantial equivalent' of instruction offered in Indiana's tax-supported institutions is the notion that the education benefits the public, not the presenter" *Id.* Thus, "education that primarily serves the private interests of an organization's members" does not meet the public benefit test. *Id.*
19. In *Roller Skating Rink Operators*, the Indiana Supreme Court upheld the State Board of Tax Commissioners' determination denying an exemption to a property owned by a nonprofit trade association whose members were roller skating rink owners and operators. *Roller Skating Rink Operators*, 853 N.E.2d at 1263. The trade association used the property in connection with operating Roller Skating University ("RSU"). *Id.* RSU, in turn, provided classes to the association's members. *Id.* The classes covered topics such as hospitality, merchandising, customer service, personnel management, event planning and promotion, contracts and negotiations, risk management and legal issues, budgeting and finance, and advertising. *Id.* Professors in recreational management from two universities helped develop the curriculum, and participants could receive continuing education credits at the University of Wisconsin. *Id.*
20. In rejecting the trade association's claims, the court distinguished the facts before it from cases where educational exemptions had been allowed. *Roller Skating Rink Operators*,

853 N.E.2d at 1266. In those cases, the courses were offered to the public and the attendees were not largely or exclusively affiliated with the presenter. *Id.* Thus, while many of the marketing and business concepts taught at RSU were the same as those taught in business courses at tax-supported colleges and business schools, the same could be said of the professional development and training provided by virtually every trade association. *Id.* The court therefore upheld the State Board of Tax Commissioners' finding that any educational training provided through the trade association was merely incidental to the association's promotional activities and therefore did not confer a public benefit. *Id.* at 1267.

21. Like RSU's courses, the training offered at the subject property was merely incidental to Indiana Joint's promotion of its members' private economic interests. In fact, Indiana Joint's claims in this case are even less compelling than the trade association's claims in *Roller Skating Rink Operators*. There, the trade association showed at least some comparability between RSU's training and courses taught in public universities. By contrast, Indiana Joint's witness, Mr. Altman, did not explain how any of the training conducted at the union hall compared to offerings from tax-supported institutions. Indeed, Mr. Altman did not identify any purportedly educational component to some of the activities conducted at the property, such as holding meetings and conducting the business of Indiana Joint's membership.
22. Similarly, Indiana Joint did little to show that it predominantly used the property for charitable purposes. Once again, Mr. Altman only cursorily described the activities conducted at the union hall. And he did not attempt to break down the hall's usage between those various activities. At best, Indiana Joint prepared a document entitled "Building Use 2012." That document identifies the membership groups that held various meetings at the hall, the dates those meetings occurred, and cursory descriptions of the meetings' content, such as "Discuss business of the Local," or "Discuss member issues and training for officers/stewards/members." *Resp't Ex. 12*. Even if the Board were to assume that some of the activities identified by Indiana Joint—such as assisting members with healthcare and pension forms and training members on health and safety issues—

were charitable within the meaning of the exemption statute, Indiana Joint did not show that those uses predominated.

23. Thus, Indiana Joint's charitable-purpose claim rests on the premise that simply conducting union-related activities inherently qualifies as a charitable use. The Indiana Tax Court rejected a similar notion in *6787 Steelworkers Hall, Inc. v. John R. Scott, Assessor of Porter County*, 933 N.E.2d 591 (Ind. Tax Ct. 2010). In that case, the Tax Court upheld the Board's determination that a union's banquet hall did not qualify for an exemption. Among other things, the union claimed that, "by definition, the purposes for which unions are formed and operated are charitable" and that both the union itself and its use of the banquet hall for union activities were therefore charitable. *6787 Steelworkers Hall*, 933 N.E.2d at 596. But as the Tax Court explained, the union did not cite to any authority for the proposition that unions are inherently charitable. *Id.*
24. Finally, the fact that the PTABOA previously treated the subject property as exempt has little bearing on this appeal. Indiana Joint had the burden of proving that it owned, occupied, and predominantly used the property for exempt purposes. Because Indiana Joint failed to meet that burden, the Board must deny its appeal.

#### **SUMMARY OF FINAL DETERMINATION**

25. Indiana Joint failed to meet its burden of proving that the subject property was owned, operated, and predominantly used for educational or charitable purposes. The Board therefore finds for the Assessor and holds that the property was 100% taxable for the 2013 assessment year.

This Final Determination of the above captioned matter is issued on the date first written above.



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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>