

REPRESENTATIVES FOR PETITIONER:
Brent A. Auberry, Baker & Daniels, LLP
Arthur D. Fisher, Jr., Baker & Daniels, LLP

REPRESENTATIVE FOR RESPONDENT:
Lisa C. Garoffolo, Boone County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Interactive Academy, Inc.,	)	Petition Nos.: 06-019-08-2-8-00001
	)	06-019-08-2-8-00002
Petitioner,	)	06-019-08-2-8-00003
	)	06-019-08-2-8-00004
)	
	)	Parcel Nos.: 0031782010
v.	)	0031782008
	)	1192092000 (Personal Property)
	)	0031782007
)	
Boone County Assessor,	)	County: Boone
	)	Township: Eagle
Respondent.)	
	)	Assessment Year: 2008

Appeal from the Final Determination of
Boone Property Tax Assessment Board of Appeals

October 5, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (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 Petitioner's real and personal property (the Property) is exempt from taxation pursuant to Indiana Code § 6-1.1-10-16 because it is predominantly used for educational purposes.

Procedural History

2. Interactive Academy, Inc. (Interactive Academy or the Academy) filed Form 136 Applications for Property Tax Exemption with the Boone County Property Tax Assessment Board of Appeals (PTABOA) on May 9, 2008. The Boone County PTABOA issued its determinations denying the exemptions on July 23, 2008. On August 20, 2008, Mr. Brent Auberry, Baker & Daniels, LLP, on behalf of Interactive Academy, filed Form 132 Petitions for Review of Exemption, petitioning the Board to conduct an administrative review of the above petitions.

Hearing Facts and Other Matters of Record

3. Pursuant to Indiana Code § 6-1.1-15-4, Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on June 23, 2009, in Lebanon, Indiana.
4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Barbara L. Weaver, Director, Interactive Academy
Kendra K. Brens, Gym Director, Interactive Academy
Dave Poindexter, Outdoor Education Director, Interactive Academy

For the Respondent:¹

Lisa Garoffolo, Boone County Assessor
Charles T. Ewing, PTABOA Member
Jeffrey B. Wolfe, Former PTABOA President

5. The Petitioner submitted the following exhibits:²

- Petitioner Exhibit A – List of public schools with pre-kindergarten education programs from the Indiana Department of Education, dated February 12, 2009,
- Petitioner Exhibit B1 – School profile and curriculum from the Indiana Department of Education, preschool newsletter, dated December 2008, preschool supply list and staff directory for Zionsville Pleasant View Elementary School,
- Petitioner Exhibit B2 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website, 2008-2009 staff listing and parent newsletter dated October 24, 2008, for Granville Wells Elementary School,
- Petitioner Exhibit B3 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website, The Smoke Signal newsletters dated October 24, 2008, and January 9, 2009, parent newsletter dated January 23, 2009, school lunch times, staff listing and the 2009 boys and girls basketball schedules for Thorntown Elementary School,
- Petitioner Exhibit B4 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website, website enrollment information, staff listing, and the 2007-2008 elementary school handbook for Harney Elementary School #0565,
- Petitioner Exhibit B5 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website,

¹ The Petitioner’s counsel argued the PTABOA did not offer any explanation on its Notice of Action on Exemption Application – Form 120 as to the bases for the denial of the Petitioner’s request for exemption. *Auberry argument*. Mr. Auberry therefore objected to the Respondent offering testimony as to the reason for the PTABOA’s denial of the Petitioner’s exemption. *Id.* Once a taxpayer has properly invoked the Board’s jurisdiction, however, its proceedings are *de novo*. See Ind. Code § 6-1.1-15-4 (m) (A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.) And the Board owes the PTABOA determination no deference. Thus, while the Petitioner may feel it was deprived of the PTABOA’s explanation for its denial of the Petitioner’s request for exemption, it does not hinder the Petitioner’s ability to present its case to the Board. More importantly, to the extent Mr. Auberry wished to fully explore the Respondent’s bases for its denial, the Petitioner had ample opportunity to serve discovery on the Respondent pursuant to 52 IAC 2-8-3 and evidently chose not to. The Board therefore overrules the Petitioner’s objection.

² Exhibits KK, MM and OO contain specific financial data deemed confidential pursuant to Ind. Code § 6-1.1-35-9.

website enrollment information, staff listing, The Perry-Worth Hawk Herald newsletters dated October 24, 2008, and January 23, 2009, letters to parents, classroom news, and elementary supply list for Perry Worth Elementary School,

- Petitioner Exhibit B6 – School profile and curriculum from the Indiana Department of Education, Carey Ridge preschool staff and Carey Express newsletters dated October 10, 2008, and October 16, 2008, for Carey Ridge Elementary School #2494,
- Petitioner Exhibit B7 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website, preschool staff and The Glen Gazette newsletter dated August 22, 2008, for Maple Glen Elementary #2504,
- Petitioner Exhibit B8 – School profile and curriculum from the Indiana Department of Education and preschool staff directory for Oak Trace Elementary School #2496,
- Petitioner Exhibit B9 – School profile and curriculum from the Indiana Department of Education, staff list, and the Carmel Clay Parks & Recreation News & Views dated January 2009 for Cherry Tree Elementary School #2508,
- Petitioner Exhibit B10 – School profile and curriculum from the Indiana Department of Education and staff listing for Forest Dale Elementary School #2518,
- Petitioner Exhibit B11 – School profile and curriculum from the Indiana Department of Education, list of early childhood teachers, staff listing, the Carmel Clay Parks & Recreation News & Views dated January 2009 for Smoky Row Elementary School #2512, Carmel Clay Parks & Recreation 2008-2009 programs for Extended School Enrichment, enrichment club narratives and the Carmel Clay Parks & Recreation’s summer camp series,
- Petitioner Exhibit B12 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website and early childhood staff list for Forest Hill Elementary School #2541,
- Petitioner Exhibit B13 – School profile and curriculum from the Indiana Department of Education and early childhood staff list for Hazel Dell Elementary School #2538,
- Petitioner Exhibit B14 – School profile and curriculum from the Indiana Department of Education and early childhood staff list for Noble Crossing Elementary School #2537,

- Petitioner Exhibit B15 – School profile and curriculum from the Indiana Department of Education and the early childhood staff list for North Elementary School #2529,
- Petitioner Exhibit B16 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website and the early childhood staff list for Stony Creek Elementary School #2533,
- Petitioner Exhibit B17 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website and the early childhood staff list for White River Elementary School #2547,
- Petitioner Exhibit B18 – School profile and curriculum from the Indiana Department of Education, staff listing and a copy of the school’s website on Developmental Preschool for Brown Elementary School #2706,
- Petitioner Exhibit B19 – School profile and curriculum from the Indiana Department of Education and a copy of the school’s website for North Elementary School #2721,
- Petitioner Exhibit B20 – School profile and curriculum from the Indiana Department of Education and staff list for Mill Creek West Elementary #2677,
- Petitioner Exhibit B21 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website, and a list of staff for Van Buren Elementary School #2761,
- Petitioner Exhibit B22 – School profile and curriculum from the Indiana Department of Education and staff listing for Wilson-Even Start #6305,
- Petitioner Exhibit B23 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website, metropolitan school district of Lawrence Township boundary map, and brochure on academics, programs, parent resources and Early Learning Family Association for Early Learning Center #5284,
- Petitioner Exhibit B24 – School profile and curriculum from the Indiana Department of Education and a copy of the school’s website for Indianapolis Lighthouse Charter School,
- Petitioner Exhibit B25 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website and staff listing for Anna Brochhausen School 88,
- Petitioner Exhibit B26 – School profile and curriculum from the Indiana Department of Education and staff listing for Carl Wilde School 79 #5579,

- Petitioner Exhibit B27 – School profile and curriculum from the Indiana Department of Education and staff listing for Charity Dye School 27 #5527,
- Petitioner Exhibit B28 – School profile and curriculum from the Indiana Department of Education and staff listing for Elder W Diggs School 42 #5542,
- Petitioner Exhibit B29 – School profile and curriculum from the Indiana Department of Education and staff listing for Francis Scott Key School 103 #5603,
- Petitioner Exhibit B30 – School profile and curriculum from the Indiana Department of Education and staff listing for Frederick Douglass School 19 #5674,
- Petitioner Exhibit B31 – School profile and curriculum from the Indiana Department of Education and staff listing for James Whitcomb Riley School 43 #5543,
- Petitioner Exhibit B32 – School profile and curriculum from the Indiana Department of Education and staff listing for Mary E. Nicholson School 70,
- Petitioner Exhibit B33 – School profile and curriculum from the Indiana Department of Education and staff listing for Riverside School 44 #5544,
- Petitioner Exhibit B34 – School profile and curriculum from the Indiana Department of Education, and a copy of the school’s website and staff listing for T.C. Steele School 98 #5598,
- Petitioner Exhibit B35 – School profile and curriculum from the Indiana Department of Education and staff listing for Thomas D. Gregg School 15 #5515,
- Petitioner Exhibit B36 – School profile and curriculum from the Indiana Department of Education and staff listing for Washington Irving School 14 #5514,
- Petitioner Exhibit B37 – School profile and curriculum from the Indiana Department of Education and staff listing for Hornet Park Elementary School,
- Petitioner Exhibit B38 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website and preschool staff listings for Bridgeport Elementary School #5446,
- Petitioner Exhibit B39 – School profile and curriculum from the Indiana Department of Education and a copy of the school’s website for Chapel Glen Elementary School #5227,
- Petitioner Exhibit B40 – School profile and curriculum from the Indiana Department of Education, and a copy of the school’s website for Maplewood Elementary School #5223,

- Petitioner Exhibit B41 – School profile and curriculum from the Indiana Department of Education and a copy of the school’s website for Westlake Elementary School #5273,
- Petitioner Exhibit B42 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website on Warren Early Childhood Center, and ECC Warren newsletter dated December 15, 2008, for Warren Early Childhood Center #5395,
- Petitioner Exhibit B43 – School profile and curriculum from the Indiana Department of Education, early childhood coordinator, staff listing and a copy of the school’s website on the preschool team for Fishback Creek Public Academy #5349,
- Petitioner Exhibit B44 – School profile and curriculum from the Indiana Department of Education and preschool staff listing for Snacks Crossing Elementary School #5363,
- Petitioner Exhibit B45 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website on Bunche Montessori Early Childhood Center, history, mission statement and newsletters dated August 24, 2007, February 8, 2008, August 29, 2008, and February 27, 2009, for Bunche Elementary School #0151, 2009 school catalog, school locations map, mission statement, enrollment projections, 2007-2008 school calendar and a school and bus list dated May 31, 2009, for the Fort Wayne Community Schools,
- Petitioner Exhibit B46 – School profile and curriculum from the Indiana Department of Education, a copy of the school’s website, parent newsletters for August 2007, September 2007, December 2007, and March 2008, and a copy of “Guiding Principles for our School Improvement and School Improvement Planning” for Whitney M Young Early Childhood #0241,
- Petitioner Exhibit C1 – Lilly Endowment news release dated September 21, 2005,
- Petitioner Exhibit C2 – The Lebanon Reporter news article dated August 3, 2006,
- Petitioner Exhibit C3 – Western Boone School Corporation board minutes dated May 12, 2008,
- Petitioner Exhibit D1 – Brochure on Bunche & Towles Schools from Fort Wayne Community Schools,
- Petitioner Exhibit D2 – Fort Wayne Community Schools’ news release “Artists teaching Whitney Young students African drums and dancing” dated October 26, 2007,

- Petitioner Exhibit D3 – Fort Wayne Community Schools’ new release “FWCS preschools earn national accreditation” dated August 26, 2008,
- Petitioner Exhibit D4 – Fort Wayne Community Schools’ newsletter “Bunche Montessori Early Childhood Center” dated August 24, 2007,
- Petitioner Exhibit D5 – Fort Wayne Community Schools’ newsletter “Bunche Montessori Early Childhood Center” dated December 21, 2007,
- Petitioner Exhibit D6 – Fort Wayne Community Schools’ newsletter “Bunche Montessori Early Childhood Center” dated February 29, 2008,
- Petitioner Exhibit D7 – Fort Wayne Community Schools’ board minutes dated March 26, 2007, May 14, 2007, June 11, 2007, July 23, 2007, and September 10, 2007,
- Petitioner Exhibit E – Metropolitan School District of Lawrence Township, Marion County board minutes dated December 17, 2007, February 25, 2008, and March 24, 2008,
- Petitioner Exhibit F1 – Western Boone County Community Schools’ 2006 and 2007 biannual financial report data,
- Petitioner Exhibit F2 – Fort Wayne Community Schools’ 2006 and 2007 biannual financial report data,
- Petitioner Exhibit F3 – Metropolitan School District of Lawrence Township, Marion County’s 2006 and 2007 biannual financial report data,
- Petitioner Exhibit F4 – State Board of Accounts audit report for Fort Wayne Community Schools dated July 1, 2005, to June 30, 2007,
- Petitioner Exhibit F5 – State Board of Accounts audit report for Metropolitan School District of Lawrence Township, Marion County, dated July 1, 2005, to June 30, 2007,
- Petitioner Exhibit G – House Enrolled Act No. 1001, chapter 35, “Prekindergarten Grant Pilot Program,”
- Petitioner Exhibit H – List of the 2007 bills sent to the Governor’s office,
- Petitioner Exhibit I – Indiana Department of Education’s mission and vision statement,
- Petitioner Exhibit J – Indiana Department of Education’s website information on “Prime Time,”
- Petitioner Exhibit K – Indiana Department of Education’s website information on “Indiana’s ready to learn, ready schools initiative,”
- Petitioner Exhibit L – Indiana Department of Education’s website information on “A Framework for Preschool Literacy Instruction,”
- Petitioner Exhibit M – Indiana Department of Education’s 2007-2008 graph of public school enrollment by grade and gender,

- Petitioner Exhibit N – Indiana’s Education Roundtable “Indiana’s P-16 Plan for Improving Student Achievement,” Phase I, dated October 28, 2003,
- Petitioner Exhibit O – Indiana Department of Education’s “Resolution to Adopt Indiana’s P-16 Plan for Improving Student Achievement – Phase I,” dated October 28, 2003,
- Petitioner Exhibit P – Press release “Kernan signs executive order creating state commission for early learning, school readiness,” dated May 11, 2004,
- Petitioner Exhibit Q – Indiana Department of Education and Family and Social Services Administration, Division of Family Resources, Bureau of Child Care’s “Foundations to the Indiana Academic Standards for Young Children from Birth to Age 5,” revised August 2006,
- Petitioner Exhibit R – Center for Evaluation & Education Policy “Evaluation of the Early Literacy Intervention Grant Program,” dated June 29, 2007,
- Petitioner Exhibit S – List of schools receiving the 2007-2008 Early Intervention Grants,
- Petitioner Exhibit T – Copy of Indiana Code § 20-20-25 “Prekindergarten Grant Pilot Program,”
- Petitioner Exhibit U – State of Indiana Office of Management & Budget’s “Student Instructional Expenditure Report for 2006-07 School Year,” dated June 3, 2008,
- Petitioner Exhibit V – Interactive Academy’s class schedules and curriculum standards,
- Petitioner Exhibit W – Interactive Academy’s brochures on summer camps, parent’s night out, Tae kwon do, Interactive stars cheerleading, Mom’s day out, after-school Spanish classes, little all-stars soccer program and gymnastics,
- Petitioner Exhibit X – List of Interactive Academy students as of March 1, 2008, and 2009,
- Petitioner Exhibit Y – Interior and exterior photographs of the Interactive Academy,
- Petitioner Exhibit Z – Indiana Department of Education’s “2004-05 Early Intervention Grant Awards,” Indiana Department of Education 2006-2007, 2007-2008, and 2008-2009, Early Intervention Grant Application, Early Intervention Grant Program frequently asked questions and letter from Jayma McGann, Director, Division of Prime Time/Reading First and Suzanne Siamas, Consultant, Division of Prime Time to Superintendents on “2007-2008 Early Literacy Intervention Grant,”
- Petitioner Exhibit AA – Petitioner’s local preschool education information table,

- Petitioner Exhibit BB – 2009-2010 ZCare Guide, ZCare registration form, and ZCare brochures,
- Petitioner Exhibit CC – Zionsville School’s kindergarten early entrance waiver application,
- Petitioner Exhibit DD – Interactive Academy reports on school and physical education enrollment and use of the facility by outside groups and individuals for 2007, 2008 and 2009,
- Petitioner Exhibit EE – Affidavit of Dave Poindexter, Director of Outdoor Education, dated June 15, 2009, Interactive Academy Outdoor Education Development timeline, outdoor education and team building course map, list of activities from the Zionsville Sports Alliance, photographs of the outdoor education area,
- Petitioner Exhibit FF – Affidavit of John Sima and aerial photograph of the property,
- Petitioner Exhibit GG – Color coded floor plan map and architect’s floor plans prepared by Rottmann Architects,
- Petitioner Exhibit HH – Memorandum from Baker & Daniels, LLP, to the Indiana Board of Tax Review, dated June 15, 2009,
- Petitioner Exhibit JJ – Information from the Carmel Dads’ Club on soccer, minor league baseball 2009 schedule and boys recreational basketball, and Indy Parks and Recreation 2009 summer day camps and schedules of various sporting activities,
- Petitioner Exhibit KK – Interactive Academy’s Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132, Application for Property Tax Exemption – Form 136 and attachments for Parcel Nos. 00317820, 0031782008, 0031782010 and 1192092000, presented as evidence at the PTABOA hearing (redacted),
- Petitioner Exhibit MM – Interactive Academy’s Application for Property Tax Exemption – Form 136 for March 1, 2009, with attachments (redacted),³
- Petitioner Exhibit OO – The Boone County Assessor’s preliminary list of exhibits and witnesses, and exchange of evidence,
- Petitioner Exhibit QQ – Interactive Academy’s physical education training schedules.

³ The Petitioner exhibit list also states Exhibit NN as “all documents submitted to the Boone County Board as part of the review of exemption application by the County Board”. These documents were not submitted as part of the Petitioner’s evidence.

6. The Respondent submitted the following exhibits:

- Respondent Exhibit 1 – Respondent’s checklist for Form 136,
- Respondent Exhibit 2 – Application for Property Tax Exemption – Form 136 with attachments, dated May 9, 2008,⁴
- Respondent Exhibit 3 – Letter from Lisa Garoffolo, Boone County Assessor to Interactive Academy, dated May 29, 2008,
- Respondent Exhibit 4 – Memorandum from Brent Auberry, Baker & Daniels, LLP, to the Boone County Property Tax Assessment Board of Appeals, dated July 2, 2008,
- Respondent Exhibit 5 – Interior and exterior photographs of Interactive Academy’s activities,
- Respondent Exhibit 6 – Letter from Brent Auberry to Lisa Garoffolo, Boone County Assessor, dated July 8, 2008,
- Respondent Exhibit 7 – Notice of Action on Exemption Application – Form 120 for Parcel No. 003-17820-08, dated July 23, 2008,
- Respondent Exhibit 8 – Notice of Action on Exemption Application – Form 120 for Parcel No. 003-17820-07, dated July 23, 2008,
- Respondent Exhibit 9 – Notice of Action on Exemption Application – Form 120 for Parcel No. 003-17820-10, dated July 23, 2008,
- Respondent Exhibit 10 – Notice of Action on Exemption Application – Form 120 for Parcel No. 119-20920-00, dated July 23, 2008,
- Respondent Exhibit 11 – Indiana Board of Tax Review Notice of Hearing on Petition, dated March 4, 2009.

7. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

- Board Exhibit A – Form 132 petitions with attachments,⁵
- Board Exhibit B – Notices of Hearing on Petitions,
- Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
- Board Exhibit D – Hearing sign-in sheet.

8. The properties under appeal consist of Parcel No. 003-17820-07, a .78 acre lot of undeveloped land; Parcel No. 003-17820-10, a .14 acre lot of undeveloped land; Parcel No. 003-17820-08, a 45.53 acre lot developed with a 46,775 square foot building housing

⁴ Respondent Exhibit 2 is the Petitioner’s Application for Property Tax Exemption – Form 136 in which the Petitioner’s attached copies of its financial data that is deemed confidential pursuant to Ind. Code § 6-1.1-35-9.

⁵ Attached to Board Exhibit A is copies of the Petitioner’s financial data that is deemed confidential pursuant to Ind. Code § 6-1.1-35-9.

a preschool, classrooms, administrative offices and other support areas, a pro-shop and a gymnasium; and all of the Petitioner's personal property (Parcel No. 119-20920-00) located at 3795 South U.S. Highway 421, Zionsville, in Eagle Township, Boone County.

9. The ALJ did not conduct an on-site inspection of the property.
10. For 2008, the PTABOA determined the real and personal property to be 100% taxable.
11. For 2008, the Petitioner contends that the real and personal property should be 100% tax-exempt.

Jurisdictional Framework

12. The Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

Administrative Review and Petitioner's Burden

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township*

Assessor, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).

15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

Basis of Exemption and Burden

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
17. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
18. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 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 Ct. 1990)).

19. 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 statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Petitioner's Contentions

20. The Petitioner contends its property should be exempt under Indiana Code § 6-1.1-10-16 because the property is predominantly used for educational purposes.
21. The Petitioner presented the following evidence in regard to this issue:
- A. The Petitioner contends its property is predominantly used for educational purposes and therefore is exempt. *Auberry argument*. According to the Petitioner's counsel, cases decided by the Indiana Courts and the Board of Tax Review support the Petitioner's request. *Auberry argument; Petitioner Exhibit HH*. Mr. Auberry argues that to qualify for an educational exemption, a taxpayer must demonstrate that the predominant use of the property is educational, the use of the property provides a public benefit, and the use relieves the state of the financial obligation of furnishing the instruction. *Auberry argument*.
- B. Interactive Academy is a school whose purpose, in part, is "to offer students an educational experience that focuses on the student as a 'whole person' and that fosters academic, athletic, and spiritual development." *Petitioner Exhibit MM; Board Exhibit A*. The Academy has a 46.45 acre property that contains a school building, administrative offices, locker rooms, a gymnasium, a pro-shop and an outdoor education and team building course. *Auberry argument; Weaver testimony*.

According to the Petitioner's counsel, Interactive Academy was founded in 2000, as an Indiana not-for-profit corporation and it is exempt under 501(c)(3) of the Internal Revenue Code.⁶ *Auberry argument; Petitioner Exhibit MM; Board Exhibit A.*

C. Interactive Academy's Director, Barbara Weaver, testified that the school's curriculum, photographs, staff listing, flyers and school calendars demonstrate that the school offers a broad range of instruction relating to academic and physical education. *Weaver testimony; Petitioner Exhibits W, Y, KK and MM.* According to Ms. Weaver, the Academy follows the Zionsville Community School Corporation's academic calendar for their school year, but the facility is open year round offering weekend, holiday and summer programs that are academic and athletic in nature. *Weaver testimony; Petitioner Exhibits W, Y, KK and MM.* Ms. Weaver testified that the Academy's academic education includes classes in English, Spanish, mathematics, music and art. *Id.* The physical education programs include classes in gymnastics, cheerleading, martial arts, tumbling, dance and soccer. *Id.; Brens testimony.* All of the staff employed by Interactive Academy have degrees and certifications in their area of expertise. *Weaver testimony; Petitioner Exhibits KK and MM.*

D. Ms. Weaver testified that Interactive Academy offers full day preschool, prekindergarten and kindergarten classes.⁷ *Weaver testimony; Petitioner Exhibit V.* According to the Petitioner's witnesses, Interactive Academy's classes, athletic programs, enrichment programs and before and after school care programs are very similar to programs offered by numerous parks and public schools in the area and throughout the state. *Weaver and Poindexter testimony; Petitioner Exhibits B1-B46, D, BB and JJ.* Ms. Weaver testified that she believes the Academy's programs exceed the public school programs, however, because the school offers Spanish, computer training, fine art and gymnastics in addition to the standard classes and

⁶ The Indiana Secretary of State's office shows that on February 1, 2008, a Certificate of Merger was filed merging Interactive Gym, Inc., a non-profit domestic corporation, with and into Interactive Academy, Inc. *Petitioner Exhibit MM; Board Exhibit A; Weaver testimony.*

⁷ Ms. Weaver testified that starting in the fall of 2009, Interactive Academy would expand to include first grade.

programs such as language arts, math, writing, music, and science. *Weaver testimony; Petitioner Exhibits V and MM.* More specifically, Ms. Weaver testified, the curriculum taught by Interactive Academy not only follows, but exceeds the standards used for preschool, pre-kindergarten and kindergarten students as preparation for public schools. *Weaver testimony; Petitioner Exhibits B1- B46, AA.*

- E. Ms. Weaver testified that Interactive Academy also has a world class gymnastics facility. *Weaver testimony.* According to Ms. Weaver, the gymnastics program trains students from Westfield, Carmel, Zionsville and Plainfield. *Weaver testimony.* In addition, the Petitioner's gymnastics summer camps and competitions attract participants from all over the State of Indiana. *Weaver testimony.* Ms. Weaver testified that gymnastics improves balance, builds upper body strength, improves confidence and self-worth, improves social skills, grows a child's brain, promotes reading readiness and improves safety awareness.⁸ *Weaver testimony; Petitioner Exhibit OO.*
- F. The Petitioner's witness, Mr. Poindexter testified that in August 2007, the Academy also implemented an outdoor education program to teach its students about environmental impact, animal habitats and behavior, biology, botany and teamwork. *Poindexter testimony; Petitioner Exhibit EE.* According to the witness, the outdoor education program incorporates lifetime sports into the Academy's physical education program, such as hiking, walking and camping. *Id.* In support of this contention, the Petitioner submitted a development timeline, map and photographs of the outdoor education program. *Petitioner Exhibit EE.*
- G. The Academy charges tuition and fees for its preschool, kindergarten and athletic programs – which is how the school generates revenue to continue operating. *Auberry argument.* The Petitioner argues that charging fees for its services does not

⁸ Ms. Brens testified the gymnasium is also rented out for birthday parties and hosts approximately 5 to 7 birthday parties per weekend. *Brens testimony.* The birthday parties, however, are devoted to gymnastics education with Interactive Academy instructors. *Brens testimony.*

disqualify a taxpayer from receiving an exemption. *Id.* Further, the Petitioner's witnesses testified that fees for preschool education, all day kindergarten, pre- and post-school activities and athletic programs are common even in publicly supported schools. *Weaver, Brens and Poindexter testimony.* For example, Ms. Weaver testified that public schools charge for preschool and before school and after school care. *Weaver testimony.* Similarly, parks and public schools charge fees to the students participating in their academic and athletic summer programs. *Weaver and Poindexter testimony; Petitioner Exhibits B1-B46 and BB.* Despite its tuition and fees, however, Ms. Weaver testified that the Academy's financial reports show that for the years 2004 through 2008, the school has been unprofitable.⁹ *Weaver testimony; Petitioner Exhibits KK, MM and OO (redacted).*

H. The Petitioner argues that Indiana recognizes the importance of prekindergarten and early childhood education. *Auberry argument.* In support of this contention the Petitioner submitted House Enrolled Act 1001, including the "Prekindergarten Grant Pilot Program" that was signed into law on May 11, 2007; a copy of Indiana's Education Roundtable P-16 Plan for improving student achievement, adopted October 28, 2003; and a copy of "Foundations to the Indiana Academic Standards for Young Children from Birth to Age 5." *Petitioner Exhibits G, H, O, P, Q and T.* Ms. Weaver testified the State also has programs such as Prime Time, which aims to reduce class sizes in prekindergarten through third grade; Indiana's Ready to Learn, Ready Schools Initiative, which aims at aiding children and their families with diverse backgrounds in the transition into kindergarten; and the Early Literacy Intervention Grant Program, which aims at improving the literacy skills of students in preschool through second grade who are at risk for future academic failure due to poor reading skills. *Weaver testimony; Petitioner Exhibits J, K, R, S and Z.* The

⁹ Ms. Weaver testified that Mr. John Sima pays the Academy \$1,000 a year to farm approximately 15 acres since 2006. *Weaver testimony; Petitioner Exhibit FF.* According to Ms. Weaver the income received from Mr. Sima is deposited into the school's general fund. *Weaver testimony.* In addition, Ms. Weaver testified that there is a small area referred to as the pro-shop within the gymnasium where proper gymnastics attire is sold. *Weaver testimony.* The pro-shop generates approximately \$3,000 a month in revenue. *Brens testimony.*

Indiana State Board of Education shows that funding for preschool programs has increased over 500% between 2006 and 2008. *Petitioner Exhibit U.*

- I. Ms. Weaver testified the Indiana Department of Education statistics show that for the 2007-2008 school year there were 10,717 pre-kindergarten students and 75,415 kindergarten students enrolled in public schools in the State of Indiana. *Weaver testimony; Petitioner Exhibit M.* From March of 2007 through March of 2008, the average enrollment at Interactive Academy was 1,151 students. *Brens and Weaver testimony; Petitioner Exhibit DD.* According to the Petitioner's witness, 5% of its students were preschool students, 1% of the students were in kindergarten and the remaining 94% were children and adults attending physical education courses such as dance, tae kwon do, cheerleading, tumbling, gymnastics and camps. *Id.*
- J. Finally, in response to the Respondent's questions, Ms. Weaver admitted that Interactive Academy was not accredited by the State of Indiana. *Weaver testimony.* Ms. Weaver argues, however, it is not required to be accredited to conduct preschool and kindergarten classes. *Id.* According to Ms. Weaver, the Academy will be seeking accreditation from the State by January 31, 2010, for its first grade class, which is being added for the 2009-2010 school year. *Id.*

Respondent's Contentions

22. The Respondent contends that the Academy's petitions for exemption under Indiana Code § 6-1.1-10-16 were denied because, although Interactive Academy is a worthy organization, it has not shown it relieves any educational burden of tax supported schools. *Garoffolo and Ewing testimony.* According to Ms. Garoffolo, the Academy is only devoting 6% of its programs to preschool and kindergarten, which are not required programs in the State of Indiana. *Garoffolo testimony.* The remaining 94% of the school's programs are devoted to recreational programs such as gymnastics, dance, tumbling, martial arts, soccer and cheerleading. *Garoffolo and Ewing testimony.*

Therefore, the Respondent's witness argues, Interactive Academy has not shown it is used for an educational purpose. *Ewing testimony*.

Analysis of the Issue

23. Interactive Academy contends that its property should be exempt from taxation under Indiana Code § 6-1.1-10-16. *Auberry argument*. Thus the Academy bears the burden of proving by a preponderance of the evidence that the subject property is owned, occupied, and predominately used for one of the exempt purposes in that statute. *See Indianapolis Osteopathic Hospital Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009, 1114 (Ind. Tax Ct. 2004). While Indiana Code § 6-1.1-10-16(a) lists a number of exempt purposes, the Academy only claims that its property is used for educational purposes. *Petitioner Exhibit MM*.
24. Indiana Code § 6-1.1-10-16(a) states that “All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.” Ind. Code § 6-1.1-10-16(a). Further, “a tract of land ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(c). Finally, “[p]ersonal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.” Ind. Code § 6-1.1-10-16(d).
25. Indiana Courts have applied basic principles in interpreting the term “educational” under Indiana Code § 6-1.1-10-16 (a) and its predecessor statutes. “Education,” as that term is broadly understood, can occur anywhere, including private homes. *Fort Wayne Sports Club, Inc. v. State Board of Tax Commissioners*, 258 N.E.2d 874, 881 (1970). A more restrictive definition is therefore required to avoid irrationally applying the tax-exemption statute. 147 Ind. App. At 139-40, 258 N.E.2d at 881.

26. Thus, a taxpayer must demonstrate a public benefit by showing that it provides education that is the “substantial equivalent” to instruction offered in Indiana’s tax-supported institutions. *Department of Local Government Finance v. Roller Skating Rink Operators Association*, 853 N.E. 2d 1262, 1266 (Ind. 2006). The closer the taxpayer’s activity is to traditional educational programs offered in public schools, the more obvious is the public benefit. But a taxpayer need not offer courses that are directly analogous to courses taught in public schools; rather, the taxpayer’s courses simply need to be related to public-school offerings. *Id.* (citing *Trinity School of Natural Health v. Kosciusko County Property Tax Assessment Board of Appeals*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003)). Further, the taxpayer need only relieve the state’s burden of providing public education to “some limited extent.” *Id.* (quoting *Trinity School*, 799 N.E.2d at 1238).
27. Here the Academy provides early childhood development through its preschool and kindergarten programs. *Weaver testimony*. Ms. Weaver testified the school’s students are expected to meet and exceed the primary education standards set for preschool and kindergarten students in public schools in classes such as Spanish, computer, language arts, math, writing, music and science. *Weaver testimony; Petitioner Exhibits A, B1-B46, C2-C3, D1-D7, E, F1-F5, S-U, AA-CC and JJ*. The Academy’s curriculum also offers a broad range of instruction in gymnastics, cheerleading, martial arts, tumbling, dance and fine arts which are similar to or related to physical education and art courses taught in tax-supported schools. *Brens testimony; Petitioner Exhibit W*. Further, the Academy offers outdoor programs educating students of all ages on the environment, animal behavior, biology and teamwork. *Poindexter testimony; Petitioner Exhibit EE*.
28. “Taxpayers who predominantly use their property to provide instruction and training equivalent to that provided by tax-supported institutions of higher learning and public schools will qualify for the educational exemption because they provide a benefit to the public by relieving the state of its obligation to provide such instruction.” *See National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d

218, 222 (Ind. Tax Ct. 1996); *Trinity School of Natural Health, Inc. v. Kosciusko County Property Tax Assessment Board of Appeals*, 799 N.E.2d 1234 (Ind. Tax 2003). In this case, the Petitioner has demonstrated that the educational and physical activities that take place at the Academy are substantially related to those at publicly funded schools. The Petitioner has also shown that to “some limited extent” its curriculum, goals, and educational and physical activities provide a benefit to the public.¹⁰ Therefore the Petitioner has raised a prima facie case that its real and personal property qualifies for 100% exemption.

29. Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner’s case. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent testified she did not dispute any of the Petitioner’s evidence. The Respondent merely alleged that the majority of the activities conducted on the subject property are “recreational” activities not educational activities.
30. The case law in Indiana, however, does not support the Respondent’s contentions. *See Department of Local Government Finance v. Roller Skating Rink Operators*, 853 N.E.2d 1262, 1266 (Ind. Sup. Ct. 2006) (citing to *Richmond Gymnastics Training Ctr. v. Dep’t of Local Gov’t Fin.*, No. 49T10-0112-TA-100, 2003 Ind. Tax LEXIS 114, at *4-5 (Ind. Tax Ct. 2003)) (recognizing the Tax Court decision finding an educational purpose in gymnastics training courses). Although 94% of Interactive Academy’s programs are physical education programs such as gymnastics, dance, tumbling, martial arts, soccer and cheerleading, these courses of study – like the gymnastics courses at issue in *Richmond Gymnastics* – are sufficiently related to the physical education courses offered in public schools to be exempt. Thus the Respondent failed to rebut or impeach the Petitioner’s prima facie case.

¹⁰ The fact that some of the Interactive Academy’s students are adults does not diminish the educational benefits to the public.

Summary of Final Determination

31. The Petitioner established a prima facie case showing that its land, improvements and personal property qualify for exemption for the March 1, 2008, assessment. The Respondent failed to rebut this evidence. The Board therefore finds in favor of the Petitioner and holds that the subject properties are 100% exempt.

The Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date written above.

ISSUED: October 5, 2009

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
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 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 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/bills/2007/SE0287.1.html>.