

REPRESENTATIVE FOR PETITIONER:

Mattie Davis, Secretary

REPRESENTATIVE FOR RESPONDENT:

F. John Rogers, Thompson & Rogers

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

INTERNATIONAL FREE AND )	Petition No.: 02-074-10-2-8-00004
ACCEPTED MODERN MASONS )	
AND ORDER OF EASTERN )	Parcel No.: 02-13-07-356-021.000-074
STARS, INC., )	
)	
Petitioner )	
)	County: Allen
v. )	
)	Township: Wayne
ALLEN COUNTY ASSESSOR, )	
)	
Respondent. )	Assessment Year: 2010

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

**July 31, 2013**

**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**

### **INTRODUCTION**

1. A taxpayer appealing from the denial of an exemption under Indiana’s general exemption statute (Ind. Code § 6-1.1-10-16(a)) has the burden of proving that its property was owned, occupied, and predominately used for an exempt purpose. Because the Petitioner, International Order of Free and Accepted Modern Masons and Order of the Eastern Stars, Inc., offered only vague testimony about the different ways the property was used and the frequency of those uses, it failed to meet its burden.

### **PROCEDURAL HISTORY**

2. On May 18, 2010, the Petitioner applied for a 100% property tax exemption for its real and personal property, claiming that the property was exempt under Ind. Code § 6-1.1-10-16 because it was owned, occupied, and used for religious and charitable purposes. On December 22, 2010, the Allen County Property Tax Assessment Board of Appeals (“PTABOA”) determined that the subject property was 100% taxable for the March 1, 2010 assessment date. The Petitioner then filed a Form 132 petition with the Board. The Board has jurisdiction over the Petitioner’s appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.
3. On May 7, 2013, the Board held a hearing through its administrative law judge, Joseph Stanford (“ALJ”). The following people testified under oath:
  - Mattie Davis, Secretary for the Petitioner
  - John Swihart, Tax-Exempt Deputy for the Allen County Assessor
4. The Petitioner offered the following exhibit:
  - Petitioner’s Exhibit 1: Charter from the International Grand Lodge of the International Free and Accepted Modern Masons, Inc. to Joppa Temple, dated June 18, 1952

5. The Respondent, Allen County Assessor, offered the following exhibits:
  - Respondent’s Exhibit 1: The Board’s hearing notice
  - Respondent’s Exhibit 2: Petitioner’s exemption application
  - Respondent’s Exhibit 3: Articles of Incorporation for the International Free and Accepted Masons and Order of the Eastern Star, Inc.
  - Respondent’s Exhibit 4: Certificate of Incorporation for International Free and Accepted Masons and Order of the Eastern Star, Inc.
  - Respondent’s Exhibit 5: Printout from the Indiana Secretary of State’s office regarding corporate status of International Free and Accepted Masons and Order of the Eastern Star, Inc.
  - Respondent’s Exhibit 7:<sup>1</sup> Petitioner’s exemption application
  
6. The following items are part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A: Form 132 petition
  - Board Exhibit B: Hearing notice
  - Board Exhibit C: Hearing sign-in sheet
  - Board Exhibit D: Notice of Appearance by F. John Rogers
  
7. The subject property is located at 1929 East Pontiac Street in Fort Wayne. Neither the Board nor the ALJ inspected the property.

**SUMMARY OF THE PETITIONER’S EVIDENCE AND CONTENTIONS**

8. The Petitioner is a “religious fraternal order” that operates under the guidance of the International Masons. *Davis testimony; Pet’r Ex. 1.* The order, which is statewide, has been a non-profit organization in the Fort Wayne area for over 50 years. To show the organization’s continued existence, the Petitioner offered a charter issued on June 18, 1952 by the International Free and Accepted Modern Masons, Inc. to Joppa Temple, Lodge No. 3 at Fort Wayne. Each lodge has a name, and Joppa Temple is the name of the Petitioner’s lodge. All lodges, however, are part of the Order of the International Free and Accepted Modern Masons.

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<sup>1</sup> Exhibit 7 is identical to Exhibit 2.

9. In response to evidence that the Petitioner filed articles of incorporation with the Indiana Secretary of State on May 3, 2010, the Petitioner's secretary, Mattie Davis, testified that the person who previously kept the Petitioner's records died and that other members apparently did not know how to maintain the organization's records. When the Petitioner began receiving tax notices, the members could not find the old records and they were told that they needed to "re-file." *Davis testimony.*
  
10. The Petitioner did not give much information about the subject property's use, and even then, the information was inconsistent. For example, Ms. Davis initially testified that the subject building was used "solely for meetings and . . . different operations of the Masons, depending on the time . . . of year, whatever, they do different things for that." *Davis testimony.* But she later testified that, while the building was "primarily" used by the Petitioner, it was also "used from time to time for . . . social gatherings" free of charge. *Id.* Other than pointing to an annual violence-awareness program called "Stop the Madness," however, she did not explain what those gatherings entailed or how often they occurred. *Id.*
  
11. Ms. Davis believes that the PTABOA may have denied the Petitioner's exemption application partly because of a tragic incident that occurred after one of the "Stop the Madness" programs. A nephew of one of the Petitioner's members held his own gathering after the program, charging admission and selling some items. A fight broke out at the nephew's gathering, and a young girl was killed. The Petitioner, however, did not approve the nephew using the property. *Id.*

#### **SUMMARY OF THE ASSESSOR'S EVIDENCE AND CONTENTIONS**

12. The PTABOA denied the Petitioner's exemption application because the Petitioner did not offer information about the property's predominant use, even after the PTABOA asked for it. *Swihart testimony.* A property does not qualify for exemption simply because it is operated by a non-profit organization. Neither the Petitioner nor the Masons are specifically listed as exempt organizations by any statute. And the Petitioner offered no evidence that it qualifies as a fraternal benefit organization. *Rogers argument.*

13. Also, the Petitioner was not incorporated until May 3, 2010—two months after the March 1, 2010 assessment date at issue in this appeal. *Resp't Ex. 3*. The Petitioner therefore appears to lack standing. *Rogers argument*.

#### ANALYSIS AND DISCUSSION

14. As an initial matter, because the Petitioner did not file its articles of incorporation until May 3, 2010, the Assessor claims that the organization lacked standing to prosecute an appeal before the Board relating to taxes based on the subject property's March 1, 2010 assessment. Whether the Petitioner existed as a legal entity at the time of the assessment, however, is beside the point. It exists now and owns the property.<sup>2</sup> And there is nothing to suggest that anyone other than the Petitioner would be responsible for paying the taxes on the subject property should we determine that the property is taxable. We therefore turn to the appeal's central question: Was the subject property owned, occupied and predominately used for religious or charitable purposes?
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, however, bears the burden of proving that its property qualifies for exemption. *Id.*
16. The Petitioner claimed that the subject property was exempt under Ind. Code § 6-1.1-10-16 because the property was owned, operated, and used for religious or charitable purposes. Indeed, that general exemption statute exempts all or part of a building if it is owned, occupied and predominately used by a person for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); *see also*, I.C. § 6-1.1-10-36.3(c)

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<sup>2</sup> The Petitioner was administratively dissolved on March 14, 2013. *Resp't Ex. 5*. But an administratively dissolved not-for-profit corporation continues its existence and may carry on activities necessary to wind up its affairs, including taking steps to preserve its assets and minimize its liabilities. I.C. § 23-17-22-5(a)(1); I.C. § 23-17-23-2(c).

– (d) (requiring a property to be predominately used or occupied for one or more exempt purposes in order to qualify for exemption); *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13, 14 (Ind. Tax Ct. 2009). It similarly exempts land under an exempt building and personal property owned and used in such a manner that it would be exempt if it were a building. I.C. §§ 6-1.1-10-16 (c)(1) and -(e). Property is predominately occupied or used for an exempt purpose if it is occupied or used for that purpose more than 50% of the total time that it is used or occupied during the year ending on the assessment date. I.C. § 6-1.1-10-36.3(a). Evaluating whether a given property is owned, occupied and predominately used for exempt purposes is “fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes* 914 N.E.2d at 15. Every exemption appeal therefore “‘stand[s] on its own facts’ and, ultimately, how the parties present those facts.” *Id.* (citing *Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1018).

17. The Petitioner offered little meat on the bones of its case. Ms. Davis testified in highly conclusory terms about her organization’s purpose and activities, simply describing the organization as a “religious brotherhood.” The Assessor, however, offered a portion of the Petitioner’s articles of incorporation showing that the corporation was formed “to establish a fellowship adhering to Christian principles to promote the Brotherhood of Man in alliance with the Fatherhood of God.” *Resp’t Ex. 3*. Thus, we find that the Petitioner is a religious organization. Also, while the Petitioner may not have been incorporated until May 2010, Ms. Davis testified without dispute that some form of that organization has operated since 1952. *See Davis testimony; Pet’r Ex. 1*.
18. But the Petitioner’s religious or charitable character is not dispositive—the Petitioner needed to prove that the subject property was predominately used for religious or charitable purposes. What little evidence the Petitioner offered on that point is ambiguous. For example, Ms. Davis testified that the building was used “solely for meetings and . . . different operations of the Masons, depending on the time . . . of year, whatever, they do different things for that.” *Davis testimony*. But she also testified that the building was “primarily used” by the Petitioner and that it “is used from time to time

for social gatherings,” giving as an example the annual “Stop the Madness” event. *Davis testimony (emphasis added)*.

19. Thus, even if one assumes that all of the Petitioner’s internal activities were religious or charitable, the subject property was used for other events, including social gatherings. While the Petitioner did not charge for those gatherings, that fact does not automatically make the gatherings charitable. The Petitioner needed to offer more-detailed information about the gatherings. Unfortunately, Ms. Davis described only one of the gatherings—the annual Stop the Madness event. The lack of information about the social gatherings held at the subject property might not be fatal to the Petitioner’s claim had the Petitioner offered probative evidence showing that those gatherings accounted for less than 50% of the time that the subject property was actually used or occupied. The Petitioner, however, did not offer a log or otherwise attempt to break down the subject property’s usage between the various activities conducted at the property. Instead, the Petitioner offered only Ms. Davis vague testimony that the property was used “primarily” for the Petitioner’s operations and that social gatherings occurred “from time to time.” *Davis testimony*.
20. We therefore find that the Petitioner failed to meet its burden of proving that the subject property was predominately used for religious or charitable purposes. We emphasize, however, that we base our decision on the record developed in this appeal. Had the Petitioner more fully developed the facts, we might have reached a different conclusion.

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

21. Because the Petitioner failed to prove that the subject property was predominately used for exempt purposes, we uphold the PTABOA’s determination denying the subject property an exemption for the March 1, 2010 assessment date.

The Indiana Board of Tax Review issues this Final Determination 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

### **IMPORTANT NOTICE**

- 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>