

REPRESENTATIVE FOR PETITIONER:

Carolyn Tuttle, CEO and Founder

REPRESENTATIVES FOR RESPONDENT:

Deborah J. Lewis, Vigo County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

KISS Theory Foundation,)	Petition No.: 84-002-06-1-5-00764
)	
Petitioner,)	Parcel No.: 84-06-15-202-015-000-002
)	
v.)	
)	County: Vigo
Vigo County Property Tax)	
Board of Appeals,)	Township: Harrison
)	
Respondent.)	Assessment Year: 2006

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

February 11, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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

ISSUES

1. The issue presented for consideration by the Board was whether the subject property qualifies for exemption under Indiana Code § 6-1.1-10-16 for 2006.

PROCEDURAL HISTORY

2. The Petitioner initiated an assessment appeal to the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by written document dated August 2, 2007. The Petitioner received notice of the decision of the PTABOA through a Form 115, Notification of Final Assessment Determination, dated August 26, 2008.
3. The Petitioner initiated an appeal to the Board for the 2006 tax year by filing a Form 131 petition dated September 19, 2008.¹ The Petitioner opted to have its appeal heard pursuant to the Board's Small Claims Procedures.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Administrative Law Judge Alyson Kunack held the Board's hearing in Terre Haute on November 17, 2009. She did not inspect the property.
5. The following persons were sworn and presented testimony at the hearing:
 - a. For the Petitioner – Carolyn Tuttle, CEO, KISS Theory Foundation
Kay Hall, witness,

¹ The Petitioner filed its appeal on a Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment. In general, exemption appeals are brought on a Form 132, Petition to the Indiana Board of Tax Review for Review of Exemption. To the extent that the Petitioner's filing on a Form 131 can be seen as raising an argument that the assessed value of its property is over-stated, the Board notes that the Petitioner presented no valuation evidence in this case. It merely argued that it was entitled to an exemption pursuant to Indiana Code § 6-1.1-10-16.

- b. For the Respondent – Deborah J. Lewis, Vigo County Assessor
Susan McCarty, Vigo County Chief Deputy Assessor.
6. The parties submitted the following exhibits:
 - a. Petitioner Exhibit 1: Summary of Petitioner’s case and associated documents,
Petitioner Exhibit 2: WABASH VALLEY JOURNAL OF BUSINESS article,
 - b. Respondent Exhibit 1: Indiana Code § 6-1.1-2-1,
Respondent Exhibit 2: Indiana Code § 6-1.1-10-16,
Respondent Exhibit 3: Charitable exemption synopsis,
Respondent Exhibit 4: Educational exemption synopsis,
Respondent Exhibit 5: Board determination in *United Ancient Order of Druids, Grove #29 v. Wayne County PTABOA*, Petition No. 89-014-08-2-8-00001 *et al.* (June 22, 2009),
Respondent Exhibit 6: Form 136 dated May 11, 2006.
 7. The following items, in addition to the digital recording of the hearing, are part of the record of the proceedings:
 - Board Exhibit A – Form 131 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
 8. The subject property is a former single-family residence located at 2200 North 14th Street in the city of Terre Haute, Harrison Township in Vigo County.
 9. For 2006, the PTABOA determined the assessed value of subject property to be \$5,700 for the land and \$17,700 for the improvements, for a total assessed value of \$23,400.
 10. The Petitioner does not contest the assessed values, but instead challenges the removal of its property tax-exempt status.

JURISDICTIONAL FRAMEWORK

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions;

and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana 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 THE PETITIONER’S BURDEN

12. 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 Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
13. 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. Wash. Twp. 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”).
14. 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

15. 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.

16. 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 owner 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).
17. 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)).
18. 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).

SUMMARY OF THE PETITIONER’S CASE

19. The Petitioner’s representative, Ms. Tuttle, testified that she created the KISS Theory Foundation to motivate the community toward better health by standing and sitting taller and breathing deeper. *Tuttle testimony; Petitioner Exhibit 1*. Ms. Tuttle testified that she set up the KISS Theory Foundation as a “grassroots inspirational wellness movement.” *Id.* According to Ms. Tuttle, the Foundation works with a local chapter of the Red Hat Society to provide free health-encouraging speaking engagements, weekly meetings, and

exercise classes, as well as participating in local beautification projects by providing free flower seeds and plants to the community and maintaining several flower beds in a public park. *Id.* Ms. Tuttle testified she is also working with Rose-Hulman University to develop a bracelet which would vibrate every five minutes as a reminder to stand taller and breathe deeper. *Id.*

20. The Petitioner's representative contends that the Foundation's tax exemption was removed because she operates a massage business out of the subject property.² *Tuttle testimony.* Ms. Tuttle argues, however, that C.T.'s Massage Expressions is not the predominant use of the property. *Tuttle testimony.* According to Ms. Tuttle, the property is used for massages only about two hours a day. *Id.; Petitioner Exhibit 1.*
21. Further, the Petitioner's representative argues the Foundation would be unable to survive without the income from the massage business because it is the primary source of funds for the Foundation. *Tuttle testimony; Petitioner Exhibit 1.* According to Ms. Tuttle, the Foundation has never asked the community or United Way for any fundraising assistance, nor has it ever collected any membership or program fees. *Id.* Ms. Tuttle argues that the added burden of property tax "would be devastating to [the Foundation's] existence." *Id.* In fact, for January 1 to November 15 of 2009, the Foundation's total expenses were \$6,353, and the income for C. T.'s Massage Expressions was \$6,365. *Id.*
22. Finally, Ms. Tuttle testified that when the Foundation acquired the subject property, it was extremely run down and in poor condition. *Tuttle testimony.* The electrical wiring needed to be completely redone; the floors and walls were in very poor condition; a furnace had to be installed; and the roof and exterior siding were replaced. *Id.* Further, Ms. Tuttle testified that she planted extensive flower gardens on the property. *Id.* According to Ms. Tuttle, the Greater Terre Haute Chamber of Commerce and WTHI awarded the Petitioner a "Beautification Award" for its flower garden displays and property improvement achievements. *Id.*

² Ms. Tuttle stated that the Foundation was losing its "501(c)(3) tax exemption," but it is clear from the record that she was referring to the Petitioner's property tax exemption rather than any federal income tax exemption.

SUMMARY OF THE RESPONDENT'S CASE

23. The Respondent testified that under Indiana Code § 6-1.1-2-1, all real property in Indiana is subject to taxation unless otherwise provided by law. *Lewis testimony; Respondent Exhibit 1.* According to Ms. Lewis, certain statutes provide for some property to be exempt from taxation, but an exemption is a privilege that can only be obtained through the filing of an application for exemption. *Lewis testimony.* Ms. Lewis contends that the Petitioner initially claimed a charitable use exemption on its Form 136 application, but the Foundation also appears to be claiming an educational exemption. *Id.; Respondent Exhibit 6.*
24. The Respondent testified that Indiana Code § 6-1.1-10-16(a) states that a building must be owned, used and occupied for educational, literary, scientific, religious, or charitable purposes in order to qualify for exemption from property taxation. *Lewis testimony; Respondent Exhibit 2.* According to Ms. Lewis, a taxpayer must relieve the government of its burden of public education in order to qualify for an educational exemption. *Lewis testimony; Respondent Exhibit 4.* In the Petitioner's case, Ms. Lewis argued that she knew of no curriculum in any public school that included the type of information that the Foundation provides. *Lewis testimony.* Therefore, Ms. Lewis claims, the Foundation was not relieving the government of any burden and does not qualify for an educational purpose exemption. *Id.*
25. Similarly, the Respondent argues that for a charitable purposes exemption, Indiana courts have broadly defined "charitable" as the relief of human want and suffering different from the everyday purposes and activities of man in general. *Lewis testimony; Respondent Exhibit 3.* Ms. Lewis argues that the Petitioner has not shown that it provides for any of the daily needs of people, such as nutrition or shelter. *Lewis testimony.*
26. Further, the Respondent argues that the Petitioner's 501(c)(3) status does not entitle it to State property tax exemption, because the 501(c)(3) exemption is based on how money is spent, and State property tax exemption depends on how a property is used. *Lewis*

testimony; Respondent Exhibit 3. Likewise, Ms. Lewis testified that the property's previous exempt status has no bearing on whether it qualifies for exemption for 2006, because each assessment and tax year stands alone. *Lewis testimony; Respondent Exhibit 5.*

27. Finally, Ms. Lewis testified that the PTABOA determined that Ms. Tuttle's massage business had no impact on whether the subject property qualified for exemption. *Lewis testimony.* According to the Petitioner's Form 136 application, the massage business uses the subject property only two hours daily. *Id.* Ms. Lewis admitted that two hours a day was not enough time to make the business a predominant use of the subject property. *Id.; Respondent Exhibit 6.*

ANALYSIS

28. The Petitioner claims that its property should be exempt under Indiana Code § 6-1.1-10-16 because the property is predominantly used for educational and charitable purposes. Pursuant to that statute, "[a]ll 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).
29. Tax exemption statutes are strictly construed against the person claiming the exemption. *Trinity Episcopal Church v. State Bd. of Tax Comm'rs*, 694 N.E.2d 816, 818 (Ind. Tax Ct. 1998); *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 956 (Ind. Tax Ct. 1997). Nevertheless, exemption provisions are not to be construed so narrowly that the legislature's purpose is defeated or frustrated. *See id.* Regardless, the taxpayer bears the burden of proof in showing that it is entitled to the exemption it seeks. *See State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of the Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002).
30. The test used to determine whether all or a portion of a subject property qualifies for an exemption for charitable purposes, is the "predominant use" test. *New Castle Lodge*, 765

N.E.2d at 1259. Indiana Code § 6-1.1-10-36.3 (a) states that “property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.” Indiana Code § 6-1.1-10-36.3 (c) further provides that “[p]roperty is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.” Ind. Code § 6-1.1-10-36.3 (c)(3).

31. Here the Petitioner’s representative contends the property is used for charitable and educational purposes. The sum total of the Petitioner’s evidence of the property’s educational and charitable use, however, was Ms. Tuttle’s testimony that the Foundation has “over the years provided for free health-encouraging speaking engagements, weekly meetings, exercise classes, free flower plants and seeds to the community and [it is] presently dedicated to the task of maintaining the five new flower beds in the newly designed and developed 12 Points Gold Medal Park.” While Ms. Tuttle’s enthusiasm and commitment to the community is commendable, her testimony falls far short of meeting the Petitioner’s burden to show it is entitled to an exemption.
32. Even if the Petitioner had presented detailed information regarding its use of the property, providing free speaking engagements promoting good posture and deep breathing is not the systematic instruction that Indiana Courts view as “educational.” “Education,” as that term is broadly understood, can occur anywhere, including private homes. *Fort Wayne Sports Club, Inc. v. State Bd. or Tax Comm’rs*, 258 N.E.2d 874, 881(Ind. 1970). A more restrictive definition is therefore required to avoid irrationally applying the tax-exemption statute. 258 N.E.2d at 881.

33. 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. *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 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. *Roller Skating Rink Operators Ass’n*, 853 N.E.2d at 1266 (citing *Trinity Sch. of Natural Health v. Kosciusko County Prop. Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003)).
34. The cases granting educational-purposes exemptions almost uniformly involve entities that offered classes or other systematic instruction. See *Trinity School of Natural Health, Inc. v. Kosciusko County Property Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234 (Ind. Tax Ct. 2003) (correspondence school offering health-related courses); *State Bd. of Tax Comm’rs v. Professional Photographers of America, Inc.*, 148 Ind. App. 601, 268 N.E.2d 617 (1971) (school offering courses in various phases of professional photography); *State Bd. of Tax Comm’rs v. Int’l Bus. Coll., Inc.* 145 Ind. App. 353, 251 N.E.2d 39 (1969) (business college offering courses in mathematics, English, typing, shorthand, etc.). The Petitioner’s representative, however, merely testified that she provides free speaking engagements to the public. True, in promoting its message of good posture and deep breathing, the Foundation strives to inform the public about better health. The thrust of the Foundation’s “educational activity,” however, is not to use that information to systematically train or instruct, but to prepare information and arrange speaking engagements. Thus, the Petitioner has failed to show that it qualifies for an educational-purposes exemption.
35. The Foundation also claims that it uses its property for charitable purposes. When interpreting Indiana Code § 6-1.1-10-16(a), “the term ‘charitable purpose’ is to be defined and understood in its broadest constitutional sense.” *Knox County Property Tax*

Assessment Bd. of Appeals v. Grandview Care, Inc. 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005) (citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 251 N.E.2d 673, 682 (1969)). As a result, “[a] charitable purpose will generally be found to exist if: 1) there is ‘evidence of relief of human want...manifested by obviously charitable acts different from the everyday purpose and activities of man in general’; and 2) there is an expectation of a benefit that will inure to the public by the accomplishment of such acts.” *Id.*

36. While the term “charitable” must be broadly construed and encompasses more than simply providing for the needy,³ it is worth noting that the Foundation’s activities do not fit neatly within traditional notions of charity. The Petitioner neither donates money or offers food and shelter. Nor does it fulfill other concrete needs such as helping seniors live independently for as long as possible. *Raintree Friends Housing, Inc. v. Ind. Dep’t of State Revenue* 667 N.E.2d 810, 815 (Ind. Tax Ct. 1996).
37. The Petitioner may “motivate [its] community toward better health through standing and sitting taller and breathing deeper.” However, promoting those ideals is not an obviously charitable act that (1) differs from the everyday purposes and activities of man in general, and (2) bestows a public benefit. The Foundation also relies on the fact that the Internal Revenue Service has recognized it as exempt from federal income taxation under Internal Revenue Code Section 501(c)(3). But that fact has little bearing on whether the subject property is exempt under Indiana’s property taxation statutes. Indeed, the Indiana Tax Court has rejected the argument that it should adopt IRS guidelines in determining whether an organization has charitable status in Indiana. *Raintree*, 667 N.E.2d at 816 n. 8. Similarly, the Petitioner’s previous exempt status is not probative of whether it owned, operated and used its property for exempt purposes in 2006. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm’rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)).

³ *College Corner, L.P. v. Dep’t of Local Gov’t Fin.*, 840 N.E.2d 905, 909 (Ind. Tax Ct. 2006).

38. Thus, the Petitioner failed to raise a prima facie case that it uses its property for educational or charitable purposes. Where a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

39. The Petitioner failed to make a prima facie case that its property was entitled to an exemption. The Board finds in favor of the Respondent.

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

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 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>.