

**STATE OF INDIANA
Board of Tax Review**

LAFAYETTE TRANSITIONAL HOUSING CENTER, INC.)	On Appeal from the Tippecanoe County
)	Property Tax Assessment Board of Appeals
)	
Petitioner,)	
)	Petition for Review of Exemption, Form 132
v.)	Petition No. 79-001-95-2-8-10013*
)	Parcel No. 156054000245
TIPPECANOE COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS)	
)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether Lafayette Transitional Housing Center, Inc. timely filed for exemption pursuant to Ind. Code § 6-1.1-10-16 for March 1, 1995.

* The petition number has been changed to reflect the proper year of appeal.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law herein shall be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, Lafayette Transitional Housing Center, Inc., (Petitioner) filed an Application for Exemption (Form 136) on May 16, 1995. The County Board of Review denied the exemption on May 2, 1996, and gave the Petitioner notice of the denial.

3. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Petition for Review of Exemption, Form 132, with the State seeking a review of the County Board of Review's action. The Form 132 petition was filed on May 14, 1996.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 18, 1999, before Hearing Officer Angela Smith Jones. Testimony and exhibits were received into evidence. Susan H. Kemp and Virginia K. Hopper represented the Petitioner. Harold Red Strange represented Tippecanoe County.

5. At the hearing, the Form 132 petition was labeled as Board Exhibit A. The Notice of Hearing was labeled as Board Exhibit B. The following exhibits were entered into evidence:
 - Petitioner Exhibit 1 – Certificate of Incorporation
 - Petitioner Exhibit 2 – Financial statements
 - Petitioner Exhibit 3 – Corporate By-laws
 - Petitioner Exhibit 4 – Copy of certified check for exemption fees

6. The subject property is located at 1204 Brown Street, Lafayette, Fairfield Township, Tippecanoe County, Indiana.

7. At the hearing, Ms. Kemp testified to the following:
 - (a) Their corporation is a non-profit agency that provides housing and assistance for homeless families.
 - (b) The exemption application was due May 15, but was received by the County on May 16.
 - (c) The check for the application fee was cashed.
 - (d) The Petitioner never received any notification of the application's denial.

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Burden In General

2. In reviewing the actions of the County Board (or PTABOA), the State is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
3. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
4. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not

contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

B. Constitutional and Statutory Basis for Exemption

5. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
6. Article 10, Section 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. In this appeal, the Petitioner seeks exemption under Ind. Code § 6-1.1-10-16, which provides that property is exempt from property taxation if it is owned, used, and occupied for educational, literary, scientific, religious, or charitable purposes.
7. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemption. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how the property is used but on how much money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996)(501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominately used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

C. Basis of Exemption and Burden

8. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
9. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict

construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).

10. Strict construction construes exemption from the concept of the taxpayer citizen. All property receives protection, security and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support - - taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners (NAME)*, 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
11. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
12. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

D. Conclusions Regarding the Exemption Claim

13. In the matter at hand, the Petitioner is requesting an exemption pursuant to Ind. Code § 6-1.1-10-16. However, it must first be determined if the Petitioner followed the statutory procedures for claiming the exemption.

14. The application must be filed on or before May 15 of the year of exemption as prescribed in Ind. Code §§ 6-1.1-11-1 and 6-1.1-11-3.
15. Ind. Code § 6-1.1-11-1 provides that an “[e]xemption is a privilege that may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with the statutory procedures for obtaining an exemption, he waived the exemption. If the exemption is waived, the property is subject to taxation.”
16. “In the case of exemptions from tax statutes, [the courts] have consistently held that statutes will be strictly construed against the party claiming the exemption.” *Indiana Department of State Revenue v. The Boswell Oil Co.*, 268 N.E. 2d 303, 305, citing *Gross Income Tax Division v. National Bank & Trust Co.*, 79 N. E. 2d 651 (1948).
17. Lack of knowledge regarding filing procedures is not an excuse for error in filing. *Dav-Con, Inc. v. State Board of Tax Commissioners*, 644 N.E. 2d 192, 197 (Ind. Tax 1994).
18. With regard to date of filing, a document is considered filed “if it is deposited in the United States mail, **postmarked prior to the filing deadline**” (*emphasis added*). *Indiana Sugars v. State Board of Tax Commissioners*, 683 N.E. 2d 1383 (Ind. Tax 1997), referencing Ind. Code § 6.8.1-6-3(a)(1).
19. As a part of Board Exhibit A, a photocopy of the envelope in which the application was mailed is included. The postmark on said envelope is dated May 16, 1995.
20. Barring any other evidence to the contrary, the postmark date is considered the date of mailing and consequently the date of filing. Therefore, the subject application was filed on May 16, 1995, one day past the deadline set by statute.

(May 15 fell on a Monday in 1995. Therefore, the deadline was not extended because it fell on a weekend.)

21. For the reasons stated above, the Petitioner failed to comply with the statutory procedures for claiming the exemption. The exemption is denied and the property is subject to taxation.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review