

REPRESENTATIVE FOR PETITIONER:

Ziaaddin Mollabashy, Barnes & Thornburg, LLP
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REPRESENTATIVE FOR RESPONDENT:

Jessica L. Hoover, Blaney & Walton

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lake States Dairy Center, Inc.,)	Petition No.: 56-003-08-2-8-00001
)	
Petitioner,)	Personal Property
)	
v.)	
)	County: Newton
Newton County Assessor,)	Township: Colfax
)	
Respondent.)	Assessment Year: 2008

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

September 14, 2009

FINAL DETERMINATION

The Board has 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 personal property is predominately used for educational purposes and therefore qualifies for property tax exemption under Indiana Code § 6-1.1-10-16.

PROCEDURAL HISTORY

2. The Petitioner, Lake States Dairy Center, Inc. (Lake States Dairy), filed an application for exemption for its personal property for 2008.
3. The Newton County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination denying an exemption on the Petitioner's personal property on September 2, 2008. The Petitioner filed its Petition for Review of Exemption (Form 132) on October 2, 2008.
3. Pursuant to Ind. Code §6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Ellen Yuhan, held a hearing on April 16, 2009, in Kentland, Indiana.
4. The following persons were sworn in as witnesses at the hearing:

For the Petitioner:

John Miller, Controller, Lake States Dairy Center, Inc.

For the Respondent:¹

Lester Terry Moore, Newton County Assessor
Terri Pasierb, Newton County Deputy Assessor
David L. Brown, Newton County PTABOA member.

5. The Petitioner submitted the following exhibits:

- Petitioner Exhibit 1 – Certificate and Articles of Incorporation of Lake States Dairy,
- Petitioner Exhibit 2 – By-laws of Lake States Dairy,
- Petitioner Exhibit 3 – Form 1023, Application for Recognition of Exemption for Lake States Dairy Center, Inc.,
- Petitioner Exhibit 4 – Notice from the Internal Revenue Service Granting 501(c)(3) Status to Lake States Dairy,
- Petitioner Exhibit 5 – 2005 Form 990 for Lake States Dairy,
- Petitioner Exhibit 6 – 2006 Form 990 for Lake States Dairy,
- Petitioner Exhibit 7 – 2007 Form 990 for Lake States Dairy
- Petitioner Exhibit 8 – Form 136, Application for Property Tax Exemption for Tax Year 2005,
- Petitioner Exhibit 9 – Special Message to Property Owner regarding 2007 payable 2008 Property Taxes,
- Petitioner Exhibit 10 – Form 136, Application for Property Tax Exemption for Tax Year 2008,
- Petitioner Exhibit 11 – Form 120, Notice of Action on Exemption Application for 2008,
- Petitioner Exhibit 12 – Form 132, Petition to the Indiana Board of Tax Review for Review of Exemption,
- Petitioner Exhibit 13 – Bus loading and unloading instructions for the Dairy Center,
- Petitioner Exhibit 14 – Photograph of visitors at the entrance to the Dairy Adventure,
- Petitioner Exhibit 15 – Photograph of visitors at the milking display,
- Petitioner Exhibit 16 – Photograph of a visitor at the cow chow display,
- Petitioner Exhibit 17 – Photograph of children interacting with the nutritional display,
- Petitioner Exhibit 18 – Photograph of visitors reading the heritage display,
- Petitioner Exhibit 19 – Photograph of visitors at the circular maze,

¹ The Petitioner’s counsel objected to any testimony presented by the Respondent’s witnesses because, he contends, the Respondent failed to exchange its witness list and exhibit list within fifteen business days and failed to provide its summary of witness testimony and exhibits within five business days as required by the Board’s rules. 52 IAC 2-7-1(b). 52 IAC 2-7-1(f) states that “[f]ailure to comply with subsection (b) may serve as grounds to exclude the evidence or testimony at issue.” Here the Board notes that the Assessor served its respective documents fifteen calendar days and five calendar days prior to hearing rather than the business days required by the rule. In light of the Respondent’s substantial compliance, the Board will consider the Respondent’s witnesses testimony, but cautions the Assessor that its rules are to be complied with in future cases.

- Petitioner Exhibit 20 – Photograph of the entrance/marquis for the educational video,
- Petitioner Exhibit 21 – Photograph of a milk production exhibit,
- Petitioner Exhibit 22 – Photograph of an educational exhibit,
- Petitioner Exhibit 23 – Photograph of an educational exhibit,
- Petitioner Exhibit 24 – Photograph of the hands-on milking exhibit,
- Petitioner Exhibit 25 – Photograph of the hands-on milking exhibit,
- Petitioner Exhibit 26 – Photograph of a visitor using the milking equipment,
- Petitioner Exhibit 27 – Photograph of the hands-on milking exhibit,
- Petitioner Exhibit 28 – Photograph of the “3-A-Day” nutritional exhibit,
- Petitioner Exhibit 29 – Photograph of the children’s play area,
- Petitioner Exhibit 30 – Photograph of a milk production exhibit,
- Petitioner Exhibit 31 – Photograph of a milk production exhibit,
- Petitioner Exhibit 32 – Photograph of visitors at the “Dairy Quiz” presentation,
- Petitioner Exhibit 33 – Photograph of visitors at the “Calcium Nutrition” stations,
- Petitioner Exhibit 34 – Photograph of the Petitioner’s “Animated Tree,”
- Petitioner Exhibit 35 – Photograph of a cow character,
- Petitioner Exhibit 36 – Photograph of a child at the cereal display,
- Petitioner Exhibit 37 – Photograph of children at the cheese display,
- Petitioner Exhibit 38 – Photograph of the “String Cheese Maze,”
- Petitioner Exhibit 39 – Photograph of visitors at the climbing wall,
- Petitioner Exhibit 40 – Photograph of the Birthing Center,
- Petitioner Exhibit 41 – Photograph of a new calf at the Birthing Center,
- Petitioner Exhibit 42 – Photograph of a visitor bottle feeding a new calf at the Birthing Center,
- Petitioner Exhibit 43 – “The Dairy Adventure” brochure,
- Petitioner Exhibit 44 – Fair Oaks Farms’ Fact Sheet,
- Petitioner Exhibit 45 – Fair Oaks Farms’ folder of promotional materials and Handouts,
- Petitioner Exhibit 46 – “It’s All About Me” brochure,
- Petitioner Exhibit 47 – Statement of Financial Position of Lake States Dairy, dated December 31, 2005,
- Petitioner Exhibit 48 – Statement of Financial Position of Lake States Dairy, dated December 31, 2006,
- Petitioner Exhibit 49²
- Petitioner Exhibit 50 – Service Agreement between Southwest Dairy Museum, Inc., and Lake States Dairy Center, Inc.,
- Petitioner Exhibit 51 – Qualified State or Regional Dairy Product Promotion, Research, or Nutrition Education Programs, 2006,

² The Board’s copy of the Exhibits does not have a document behind Tab 49. The index, however, refers to a Statement of Financial Position of Lake States Dairy, dated December 31, 2007.

- Petitioner Exhibit 52 – Report to Congress on the National Dairy Promotion and Research Program and the National Fluid Milk Processor Promotion Program, dated July 1, 2002,
- Petitioner Exhibit 53 – USDA Agricultural Marketing Service, Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501-4514, As Amended through May 13, 2002),
- Petitioner Exhibit 54 – Dairy Promotion and Research Order (Revised December 8, 2008),
- Petitioner Exhibit 55 – USDA Notice to Organizations that Conduct State or Regional Dairy Product Promotion, Research, or Nutrition Education Programs dated February 11, 2009.

6. The Respondent submitted the following exhibits:
 - Respondent Exhibit 1 – A copy of Indiana Code § 6-1.1-10-16.
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 132 Petition,
 - Board Exhibit B – Notice of Hearing, dated March 9, 2009,
 - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
 - Board Exhibit D – Hearing sign-in sheet.
9. The Petitioner requested the opportunity to submit a post-hearing brief. The ALJ ordered a filing deadline of May 4, 2009. The parties submitted their briefs in a timely manner.
10. The subject property is personal property located at 856 North 600 East, Fair Oaks, Indiana.
11. For 2008, the Newton County PTABOA determined the personal property to be 100% taxable.
12. For 2008, the Petitioner claims the property is 100% exempt.

JURISDICTIONAL FRAMEWORK

13. 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 Ind. 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

14. 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).
15. 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”).
16. 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

17. 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.

18. 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).

19. 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)).

20. 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).

PARTIES' CONTENTIONS

21. The Petitioner contends that its application for exemption was timely filed pursuant to Ind. Code § 6-1.1-11-5, and that its personal property is eligible for exemption pursuant to Ind. Code § 6-1.1-10-16(e) because it is owned, occupied and used for educational purposes.

22. The Petitioner presented the following evidence in support of its contentions:
 - A. The Petitioner argues that it is seeking a property tax exemption for its personal property. *Mollabashy argument*. According to the Petitioner's witness, Lake States Dairy does not own any of the land or the buildings at 856 North 600 East, Fair Oaks. *Miller testimony*. Mr. Miller testified that both the land and the buildings Lake States Dairy uses are leased from Road 600, LLC (Road 600). *Id.* Thus, Mr. Miller contends, only the personal property owned by Lake States Dairy is at issue in this appeal. *Id.*

 - B. The Petitioner contends that it timely filed its Application for Property Tax Exemption for the 2008 assessment year. *Mollabashy argument*. According to the Petitioner's counsel, the Petitioner filed its Form 136 on June 30, 2008. *Id.* The Petitioner contends that, even if the Board accepts the Respondent's contention that the Petitioner's Form 136 was filed on July 1, 2008, the Form 136 was still timely filed because the Petitioner had until the first Monday in November 2009 to file pursuant to Indiana Code § 6-1.1-11-5. *Petitioner's Post-Hearing Brief at 14*. The Petitioner further argues that if the Form 136 had not been timely filed, the Form 120 would have identified the Petitioner's lack of timely filing as a reason for the denial of the Petitioner's application for exemption. *Id.*

 - C. The Petitioner contends that its personal property is used for educational purposes and is therefore entitled to an exemption pursuant to Indiana Code §

6-1.1-10-16. *Mollabashy argument*. According to the Petitioner’s witness, Mr. Miller, Lake States Dairy is a 501(c)(3) corporation. *Miller testimony; Petitioner Exhibit 4*. Mr. Miller argues that Lake States Dairy was formed to “educate the general public in the business of dairy and promote the dairy industry in general.” *Miller testimony*.

D. Mr. Miller testified that Lakes States Dairy is “a promotion center for milk and dairy.” *Miller testimony*. The Petitioner argues it is like a museum. *Id.* Lake States Dairy is open to the public and conducts tours seven days a week. *Id.; Petitioner Exhibit 44*. According to Mr. Miller, while much of the program is a self-guided tour, Lake States Dairy also conducts tours for various school groups as well as the general public. *Id.* According to the Petitioner’s witness, the Petitioner presents a live representation of the dairy industry through interactive exhibits, tours of dairy farms owned by third parties, and videos. *Id.; Petitioner Exhibits 14-46*. The exhibits focus on how the dairy industry protects the environment, cares for the cows, and safeguards milk to ensure the highest quality. *Petitioner Exhibit 44*. After the tour, visitors may enter the birthing barn to view the live births of calves. *Miller testimony*.

E. Financing for Lake States Dairy comes primarily from the promotional funds that the Petitioner receives from the Southwest Dairy Museum (Southwest) through the federal Dairy Checkoff Program.³ *Miller testimony*. The Dairy Checkoff Program is funded by federally mandated assessments on commercial milk producers. *Petitioner Exhibit 53 at 8*. These funds are distributed to “qualified programs,” which are certified annually by the Secretary of the United States Department of Agriculture (USDA). *Petitioner Exhibit 52 at 18*. “In order to be certified by the Secretary as a qualified

³ The United States Department of Agriculture’s Dairy Production Stabilization Act of 1983 is the Act more commonly referred to throughout as the Dairy Checkoff Program, the Dairy Program, or the Dairy Act.

program, the program must: Conduct activities as defined in §§ 1150.114 [promotion], 1150.115 [research], and 1150.116 [nutrition education], that are intended to increase consumption of milk and dairy products generally...”

Petitioner Exhibit 54 at 9. Southwest is one such qualified program.

Petitioner Exhibit 51 at 3. As a USDA qualified program, Southwest is allowed to designate Dairy Checkoff funds to any dairy facility that meets the same program requirements that Southwest meets. *Miller testimony.*

- F. Mr. Miller testified that the Petitioner is not a qualified program, but because it entered into a service agreement with Southwest and is compelled to comply with the rules and regulations of the Dairy Program, Lake States Dairy is permitted to receive the Dairy Checkoff funds through Southwest. *Miller testimony; Petitioner Exhibit 50 at 2.* Lake States Dairy also receives funds from corporate sponsorships, donations and admission fees. *Miller testimony.* According to Mr. Miller, until 2006, the Petitioner operated its tours free of charge, but because of increasing operating costs, Lake States Dairy was unable to continue covering its costs from the federal funds. *Id.* The Petitioner argues, however, that its admissions fees are used to defray the costs of the Petitioner’s operations and are not used to generate a profit. *Id.;* *Petitioner Exhibits 47 – 49.*
- G. Finally, the Petitioner contends that the property has been exempt since 2005. *Mollabashy argument.* Since that time, the Petitioner’s educational activities have not changed. *Id.* According to the Petitioner’s representative, the Respondent denied the exemption for the first time in 2008 because Lakes States Dairy started charging an admissions fee. *Id.*
23. The Respondent contends the application for exemption was not timely filed. The Respondent further claims that the property is a business and is not eligible for an exemption.

24. The Respondent presented the following evidence in support of its contentions:
- A. The Respondent contends the Petitioner is not entitled to an exemption because the Petitioner did not file its application for exemption by the deadline set forth in Ind. Code 6-1.1-11-3(a). *Hoover argument.* According to the Respondent, while the Form 136 application was signed and dated by Mr. Miller on June 27, 2008, it was not received by the Respondent until July 1, 2008. *Id.*
 - B. The Respondent further contends that the Petitioner's personal property is not entitled to an exemption because it is not used for educational purposes. *Hoover argument.* According to the Respondent, the educational exemption is available to those who provide training equivalent to that provided by tax-supported institutions of higher learning in public schools because, to the extent that such offerings are utilized, the state is relieved of its financial burden to furnish such instruction. *Id.* The Respondent argues that, although Lake States Dairy offers tours to public schools, it is not using the facilities primarily for educational purposes and it is not relieving the state of any financial burden. *Id.*
 - C. Finally, the Respondent contends Lake States is operating as a business and making a profit from the admissions fees, the restaurant, and the souvenir shop. *Hoover argument.*

ANALYSIS

25. The Board first addresses the Respondent's contention that the Petitioner failed to timely file its exemption application. The procedures for acquiring an exemption are set out in Ind. Code § 6-1.1-11 *et. seq.* Pursuant to those procedures, the Petitioner was required to file an exemption application for the 2008 tax year on or before May 15, 2008. Ind. Code § 6-1.1-11-3. The parties both agree Lakes

Lake States Dairy did not file its application in May.⁴ Because the Petitioner was exempt prior to 2008, however, the Respondent was required to send notice to the Petitioner that an exemption application had not been filed. Ind. Code § 6-1.1-11-5(b). If a county assessing official fails to send the required notice, the taxpayer has until the first Monday in November of the following year to file the exemption application and have it approved by the county. Ind. Code § 6-1.1-11-5(d). There is no evidence in the record that the Respondent sent such notice to the Petitioner. Thus, Lake States Dairy had until November to file its application and its application was timely filed.

26. The Board now turns to the substance of the Petitioner's case. Here Lake States claims its personal property, which generally consists of audio-visual equipment and informational and interactive displays, is used for educational purposes and is therefore exempt.
27. Pursuant to Indiana Code § 6-1.1-10-16, "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). Similarly, "[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(e).
28. Indiana courts have held that in order for property used in educational programs to qualify for exemption, the taxpayer must show that the property's predominant use is educational. In establishing predominant use, the taxpayer must meet a public benefits test, establishing that the education provided by the taxpayer benefits the public by relieving the state of its obligation to provide such instruction. *See Nat'l Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218, 222 (Ind. Tax Ct. 1996).

⁴ The Respondent claims the Form 136 was signed and dated by Mr. Miller on June 27, 2008, and received by Respondent on July 1, 2008. The Petitioner claims the petition was timely filed on June 30, 2008.

29. The education provided by a taxpayer does not need to be the same as the instruction offered by public schools and universities in order to qualify for an exemption. Rather, the test for exemption can be met by providing courses related to those found in tax-supported schools. *See Trinity School of Natural Health, Inc. v. Kosciusko County Property Tax Assessment Board of Appeals*, 799 N.E.2d 1234 (Ind. Tax Ct. 2003). The taxpayer must show that the educational program relieves the state’s burden of providing instruction to a limited extent with courses related to those found in tax-supported schools. *Id at 1238*.
30. The Indiana Supreme Court, however, has articulated two explicit limitations to the public benefits test for exemption. First, the program must be offered to the public and not be used to further the business objectives of the attendees. *See Dep’t. of Local Gov’t Fin. v. Roller Skating Rink Operators Association d/b/a Roller Skating Association*, 853 N.E.2d 1262 (Ind. 2006). Secondly, the taxpayer must demonstrate that the exempt purpose is the property’s predominant use. *See State Bd. of Tax Comm’rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1263 (Ind. 2002).
31. In *Dep’t. of Local Gov’t Fin. v. Roller Skating Rink Operators Association d/b/a Roller Skating Association*, the taxpayer (RSA) was a non-profit corporation made up of member roller skating rink operators. RSA argued that its primary purpose was to inform, educate and foster the professional development of its members, create opportunities for networking and promote roller-skating as a lifetime sport and safe recreational activity. *Id at 1264*. RSA provided education to its members including the study of hospitality, merchandising, customer service, personnel management, event planning and management, and other courses of study that are the equivalent to that offered at Indiana’s state universities and colleges. *Id at 1263*. The Indiana Supreme Court held that “programs of a trade association directed to the development of the private businesses of its members, though educational in some sense, do not qualify for

- property tax exemption as educational activities.” *Id at 1263*. “Implicit in the requirement that education be the ‘substantial equivalent’ of instruction offered in Indiana’s tax-supported institutions is the notion that the education benefits the public, not the presenter. Education that primarily serves the private interests of an organization’s members does not warrant public subsidy.” *Id at 1266*.
32. The Petitioner’s evidence suggests that the personal property serves an educational purpose in that it promotes some nutritional education and some education regarding dairy production and animal husbandry. However, the evidence suggests that the predominant purpose for which the Petitioner’s property is used is to promote the consumption of milk and dairy products.
33. Lake States Dairy is a not-for-profit domestic corporation, certified by the Indiana Secretary of State in January 2001. According to its Articles of Incorporation, the purposes for which Lakes States Dairy were formed includes (1) the strengthening of the dairy industry’s position in the marketplace and to maintain and expand markets and uses for fluid milk and dairy products produced in Indiana and the United States; and 2) to educate the public about fluid milk and dairy products. *Petitioner Exhibit 1*.
34. The Petitioner operates under a service agreement with Southwest Dairy Museum, Inc., whereby Southwest provides funding to Lake States Dairy which it receives from the USDA-sponsored Dairy Program by virtue of being a Qualified State or Regional Dairy Product Promotion, Research or Nutrition Education Program, certified annually by the Secretary of the USDA.
35. The Dairy Production Stabilization Act of 1983 was established with the policy objective of “...an orderly procedure for financing...and carrying out a coordinated program of promotion designed to strengthen the dairy industry’s position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products.” 7 U.S.C. 4501(b) (1983). *Petitioner Exhibit 53 at 1*. The 2002 USDA Report to Congress on the Dairy

Promotion Programs describes the Dairy Production Stabilization Act of 1983 (the Dairy Act, or Dairy Program) as a “national producer program for dairy product promotion, research, and nutrition education as part of a comprehensive strategy to increase human consumption of milk and dairy products.” *Petitioner Exhibit 52 at 5.*

36. According to the USDA Report, dairy farmers fund the “self-help program” through a mandatory assessment on milk produced in the continental United States and marketed commercially. *Id.* Income data from the 62 Active Qualified Programs shows that in 2001, only 8.9% of the programs’ budgets went to “nutrition education” and only 2.8% to nutrition research. *Id.* The remaining approximately 90% of the programs’ budgets was directed to advertising and sales, the unified market plan, public and industry communications and market and economic research. *Id.* In analyzing the impact of the Dairy Act and the related Fluid Milk Promotion Act of 1990, the USDA report noted that “[t]hese programs operate to increase milk awareness *and thus the sale of fluid milk and related dairy products.*” *Id. at 36 (emphasis added).* “Both programs utilize various types of marketing strategies to increase fluid milk and cheese consumption...” *Id.* And, in fact, the report found that fluid milk consumption was 4.5% higher, cheese consumption was 1% higher, and dairy prices were on average 6.9% higher because of the Dairy Act programs. *Id. at 37.*
37. The Dairy Act states that “In order to be certified by the Secretary as a qualified program, the program must: Conduct activities as defined in §§ 1150.114 [promotion], 1150.115 [research], and 1150.116 [nutrition education], that are intended to increase consumption of milk and dairy products generally...” *Petitioner Exhibit 54 at 9.* The USDA Report, however, lumps the three activities together making clear that the research and nutritional education contemplated in the Dairy Act are for dairy product promotion rather than for the public welfare. The report states that in order to receive certification, a qualified program must, among other things: 1) conduct activities that are intended to increase human

- consumption of milk and dairy products generally; and 2) be primarily financed by producers, either individually or through cooperative associations. *Petitioner Exhibit 52 at 18.*
38. The Petitioner’s Service Agreement with Southwest, likewise, indicates a product promotion purpose rather than the kind of educational activity that the legislature and Indiana Courts have deemed to be exempt. *Petitioner Exhibit 50.* The Service Agreement states that Southwest contracted with Lake States Dairy to “provide certain services to implement the dairy promotion, research and education program in Indiana and nearby states.” *Id.* More telling, Lake States Dairy agreed to “assist [Southwest] in [Southwest’s] operation by facilitating an on-dairy farm visitors center *to promote the consumption of milk and milk products...*” *Id. (emphasis added).* And, although the Petitioner agreed to provide “all services necessary for the implementation of the education programs set forth in Exhibit ‘A’,” no such exhibit was attached to the Agreement. *Id.*
39. The Petitioner has shown that the personal property serves some educational functions. Visitors are exposed to information regarding the nutritional value of dairy. They are introduced to the operations of a dairy farm and may observe the live birth of a calf. To some extent, however, all marketing is education about a product and its uses. Here the Petitioner’s own evidence suggests that the predominant use of the Petitioner’s property is for the purpose of increasing the sale and consumption of dairy products. That is not the kind of education that is an exempt activity. Rather it is part of a “coordinated program of promotion designed to strengthen the dairy industry’s position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products.” 7 U.S.C. 4501(b) (1983).
40. “Implicit in the requirement that education be the ‘substantial equivalent’ of instruction offered in Indiana’s tax-supported institutions is the notion that the education benefits the public, not the presenter. Education that primarily serves

the private interests of an organization's members does not warrant public subsidy." *Roller Skating Rink Operators*, 853 N.E.2d at 1266 (Ind. 2006). Here, the Board finds that to the extent that the Petitioner's property is used for an educational purpose it is to benefit the Petitioner and its affiliated dairy farmers. This is not the type of educational activity that warrants a public subsidy.

SUMMARY OF FINAL DETERMINATION

41. The Petitioner failed to establish a prima facie case to support its claim for a property tax exemption. The Board finds in favor of the Respondent and determines the personal property to be 100% taxable.

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