

REPRESENTATIVES FOR PETITIONER: Gino Johnson and Jay Jackson

REPRESENTATIVE FOR THE RESPONDENT: Marilyn Meighen, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

LAWRENCE COUNTY RECREATIONAL)	Petition Nos.	47-007-08-2-8-00001
PARK, INC.,)		47-007-08-2-8-00002
)		47-007-08-2-8-00003
Petitioner,)		47-007-12-2-8-00001
)		47-007-12-2-8-00002
)		47-007-12-2-8-00003
)		47-007-12-2-8-00004
)		47-007-12-2-8-00005
v.)		47-007-12-2-8-00006
)		
)	Parcel Nos.	47-04-02-200-001.000.007
)		47-04-03-500-002.000.007
)		47-04-03-900-003.000.007
)		47-407-07594-00
LAWRENCE COUNTY ASSESSOR,)		47-407-07595-00
)		
Respondent.)	Lawrence County	
)	Perry Township	
)	Assessment Years 2008 and 2012	

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

November 14, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

CASE SUMMARY

1. To qualify under Indiana’s general exemption statute, the Petitioner needed to prove that it owned, occupied, and predominately used its property for charitable or educational purposes. But the Petitioner’s primary use of the property—allowing members of the public to ride motorcycles and ATVs in a safe environment for a \$15 entry fee—was largely social and recreational and did not relieve human want and suffering or provide a public benefit to the degree necessary to support an exemption.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

2. The Petitioner filed exemption applications with the Lawrence County Assessor for the 2008 and 2012 assessment years, claiming that its real and personal property should be 100% exempt. The Lawrence County Property Tax Assessment Board of Appeals (“PTABOA”) denied the applications and found that the property was 100% taxable. The Petitioner responded by timely filing petitions for review with the Board.
3. The Board's designated administrative law judge, Jaime S. Harris, held a hearing on June 18, 2013. Neither she nor the Board inspected the property.
4. Gino Johnson, a member of the Petitioner’s board of directors, and Jay Jackson, its president, were sworn as the Petitioner’s witnesses. Lawrence County Assessor April Stapp Collins was sworn as the Respondent’s witness.
5. The Petitioner presented the following exhibits:
 - Exhibit 1: Pages 1 and 2 of the Petitioner’s Form 990 Return of Organization Exempt From Income Tax for 2011;
 - Exhibit 2: Pages 1 and 2 of ABATE of Indiana’s Form 990 for 2011 and pages 1 and 2 of ABATE Foundation’s Form 990 for 2011;

- Exhibit 3: Description of the park, its usage, and rules from www.abateonline.org;
- Exhibit 4: Advertisement to promote the park;
- Exhibit 5: Advertisement to promote the dirt bike school conducted at the park;
- Exhibit 6: Advertisement promoting the Miracle Trail Ride and Race held at the park;
- Exhibit 7: Brochure regarding the Indiana Motorcycle Safety Memorial located at the park;
- Exhibit 8: Statistics for public use of the park over the past two years;
- Exhibit 9: Form 990 Part VIII for Petitioner, Form 990 Part VIII for ABATE Foundation, Inc., Profit & Loss statement (January through December 2011) for ABATE Foundation, Inc.¹

6. The Respondent presented the following exhibit:

- Exhibit 1: April 4, 2013 printout from ABATE Online titled “Are you ready to Boogie?”

7. The following items are also part of the record:

- Board Exhibit A: Hearing notices,
- Board Exhibit B: Form 132 petitions,
- Board Exhibit C: Hearing sign-in sheet.

SUMMARY OF THE PETITIONER’S CASE

- 8. The Petitioner is a not-for-profit entity that has been granted an exemption from federal income taxation under section 501(c)(3) of the Internal Revenue Code. *Johnson testimony; see also, Pet’r Ex. 1.*
- 9. Jay Jackson, the Petitioner’s president, described the property as an off-road recreational park covering a little less than 400 acres. According to Jackson, the park consists of the following: trails and camping facilities, including RV hookups; a shower house; four waterless toilets; storm shelters; two mobile homes; a shop; a concession stand; a utility shed; a trailer used as an office; and a stage structure used for promotions, trail rides and

¹ With its exhibits, the Petitioner submitted what appears to be a written summary of the exhibits and of its witness’s testimony.

other activities. In 2012 at least, the Petitioner apparently also kept certain unidentified personal property at the park.² *Jackson testimony; see also, Bd. Ex. A.*

10. The Petitioner claims that the park qualifies for exemption under Ind. Code § 6-1.1-10-16 because it uses the park for charitable and educational purposes. It mainly uses the park to provide a safe environment for members of the public to ride motorcycles and all-terrain vehicles (“ATVs”). Patrons are strictly prohibited from using trucks, “sandrails” and other vehicles on the park’s trails. Many other parks around the state do not have those restrictions, which create a safe environment for families. *Johnson testimony and argument; Pet’r Exs. 3-4.*
11. The Petitioner charges each person a \$15 admission fee. There is an additional fee for camping. Despite those nominal fees, the park was never designed to make a profit. The Petitioner does not pay any employees other than a groundskeeper. *Johnson testimony.*
12. The Petitioner has been trying to make more people aware of the park’s offerings, and attendance has been increasing in recent years. For example, 750 more people used the park in 2012 than in 2011. People from as far away as New York regularly use the park and either camp at the park or find lodging nearby. Those people contribute money to the community, which helps offset any taxes that would be lost through granting the park an exemption. *Johnson testimony; Jackson testimony; Pet’r Exs. 3, 8.*
13. The Petitioner also uses the park to offer rider education courses for adults and children as young as six years old. Since 1987, the Indiana Department of Education (“DOE”) has been responsible for a statutory rider-education program, and the Petitioner contracts with the DOE to provide rider courses. The Petitioner offered approximately a dozen classes in 2007 and 2008. This figure increased to 15 or 20 classes in 2011 and 2012. The Motorcycle Safety Foundation developed most of the curriculum for those classes. *Johnson testimony; Jackson testimony; Pet’r Ex. 5.*

² Unfortunately, the Petitioner did not describe the property on a parcel-by-parcel basis. That lack of explanation is confusing, given that the Petitioner appealed only three parcels for 2008 but appealed six parcels for 2012. Thus, it appears that the property as a whole may not have been identical in the two assessment years at issue.

14. The property has been used by three other not-for-profit organizations as part of their charitable missions. DIRT, Inc., an organization of off-road motorcycle enthusiasts, spends about 30 hours per year creating and repairing trails at the park. This includes mapping the trails' coordinates and helping to create a safer environment. *Johnson testimony.*
15. Every June, the Petitioner allows Miracle Ride, Inc. to conduct one of its two fundraisers at the park free of charge. The proceeds all go to Riley Hospital for Children. The event has raised approximately \$75,000. Because it draws large crowds—1,035 people attended in 2012 alone—the event contributes to the tax base. *Johnson testimony; Pet. Ex. 6.*
16. Since 2009, ABATE of Indiana, Inc., a charitable organization with a mission to promote rider education, has paid the Petitioner \$30,000 per year to use the park. ABATE conducts several events at the park. It holds quarterly meetings of its board of directors there. The park also hosts ABATE's annual state party/fundraiser on the third weekend of June. That event is commonly known as “the Boogie,” and it is the largest single event held at the park each year. ABATE's Green County chapter holds a fundraiser at the park in June, and its Monroe County chapter holds a fundraiser in September. For two days in October, ABATE uses the property to hold an invitation-only gathering to thank its members. *Johnson testimony; see also, Pet'r Ex. 2.*
17. With the exception of four days when it is reserved for the Boogie, the park remains open to the public during all of the events and activities described above. *Jackson testimony.*
18. Finally, the park is home to the Indiana Motorcycle Memorial, which celebrates the memory of those who have advanced motorcycle safety in Indiana. For a fee, loved ones can have custom-made bricks with the names of motorcyclists who have lost their lives placed in the memorial. *Johnson testimony; Pet'r Ex. 7.*

SUMMARY OF THE RESPONDENT'S CASE

19. Simply pointing to an entity's organizational documents to show that its overall mission is charitable does not suffice to qualify its property for an exemption. Instead, a taxpayer must show relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general and a present benefit to the public sufficient to justify the loss of tax revenue. *Meighen argument (citing Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor, 909 N.E.2d 1138, 1141 (Ind. Tax Ct. 2009))*.
20. The Petitioner uses the subject property predominately as an off-road recreational park. That use is analogous to the types of social and recreational uses Indiana courts have found insufficient to support an exemption. *Meighen argument (citing Sahara Grotto and Styx, Inc. v. State Bd. of Tax Comm'rs, 261 N.E.2d 873 (Ind. App. 1970))*.
21. The Board's decision in *Riders Motorcycle Club, Inc. v. Noble County PTABOA*, pet. no. 57-006-08-2-8-00001 (Ind. Bd. Tax Rev. May 21, 2009) supports the Respondent's position. In that case, a motorcycle club claimed that it used its property to provide a safe environment for riding motorcycles. The Board, however, found that the property was used for social and recreational purposes, neither of which qualified it for an exemption. *Meighen argument*.
22. While the Petitioner points to several additional uses that it claims are charitable or educational, at least some of those uses do not qualify as exempt. For example, bands play at least three days during the Boogie. Other events at the Boogie include a "hole-shot" contest that is comparable to a drag race, arm-wrestling, "best buns" and tattoo contests, a motorcycle rodeo, and a bike show. Those are social and recreational—not charitable—activities. *Meighen argument; Resp't Ex. A*.
23. In any case, the predominate use test set forth in Ind. Code § 6-1.1-10-36(a) requires a property to be used for an exempt purpose more than 50% of the time that it is used in

order to qualify for an exemption. The park is open Thursday through Sunday from April to October, and Saturday and Sunday from November through March. That equals 152 days per year. Even if one assumes that all of the use by outside groups, such as ABATE and Miracle Ride, qualify as charitable and that the Petitioner's riding classes qualify as educational, those combined uses still amount to well less than 50% of the park's total use. Instead, social and recreational uses predominate. *Meighen argument; Johnson testimony; Pet'r Ex. 3.*

ANALYSIS

24. 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 bears the burden of proving that its property meets the statutory requirements for an exemption. *See id.*

25. The Petitioner claims that the park is exempt pursuant to Ind. Code §6-1.1-10-16(a) because it was owned, occupied, and used for charitable and educational purposes during the years in question. 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)-(d) (requiring a property to be predominately used or occupied for one or more exempt purposes in order to qualify for exemption); *Jamestown Homes* 909 N.E.2d at 1141. 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).

26. The Petitioner predominately uses the park to allow members of the public to ride motorcycles and ATVs in a safe environment for a \$15 entry fee.³ The Board must therefore determine whether that use qualifies as charitable or educational under Ind. Code § 6-1.1-10-16(a). As explained below, the Board concludes that it does not.
27. Although exemption statutes are strictly construed against the taxpayer, the term “charitable purpose” is to be defined and understood in its broadest constitutional sense. *Knox County Property Tax Assessment Board of Appeals*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005). A charitable purpose will generally be found if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *Id.* Worthwhile activity or noble purpose alone is not enough. Instead, an exemption is justified because it helps accomplish some public purpose. *National Ass’n of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E. 2d 218, 220 (Ind. Tax Ct. 1996).
28. Indiana Courts have applied those same basic principles in interpreting the term “educational” under Ind. Code § 6-1.1-10-16(a) and its predecessor statutes. “Education,” as that term is broadly understood, can occur anywhere, including private homes. Thus, to avoid irrationally applying the exemption statute, a more restrictive definition is required. *Fort Wayne Sports Club, Inc. v. State Bd. or Tax Comm’rs*, 147 Ind. App. 129, 258 N.E.2d 874, 881 (1970) (interpreting predecessor to I.C. § 6-1.1-10-16). 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.

³ Although the general exemption statute exempts land only to the extent that a building owned, occupied, and predominately used for an exempt purpose is situated on it, the Petitioner said little about how any of the park’s improvements were used. And it did not even identify the personal property for which it claimed an exemption. Instead, the Petitioner focused on how the park as a whole—including land, improvements, and personal property—was used.

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 Prop. Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003)). And 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).

29. Indiana courts have generally denied charitable- or educational-purpose exemptions to facilities used primarily for social or recreational activities. *E.g. Indianapolis Elks Building Corp. v. State Bd. of Tax Comm'rs*, 145 Ind. App. 522, 251 N.E.2d 673, 681-83 (1969); *Fort Wayne Sports Club*, 258 N.E.2d at 882. In *Indianapolis Elks*, the court denied a charitable-purpose exemption to a property that lodge members and their families used for eating, dancing, card games, swimming, and general relaxation. *Indianapolis Elks*, 251 N.E.2d at 682-83. As the court explained, those activities undoubtedly suppress human want and suffering in addition to promoting things like brotherly love, justice, and fidelity. *Id.* at 682. But as the court further explained, "these noble objectives can also be seen in the family home and at various other public and private establishments, all of which are not exempt from property taxation." *Id.* Similarly, in *Fort Wayne Sports Club*, the court held that two clubs, one of which was used for athletic activities, membership meetings, and dances and the other of which was used solely as an athletic club, were not entitled to an educational-purpose exemption. *Fort Wayne Sports Club*, 258 N.E.2d at 140-41. According to the court, any educational benefits, such as teaching light physical exercises and indoor games, were merely incidental. *See id.* at 132, 140-41.
30. The Petitioner's use of the park is analogous to the types of social and recreational activities at issue in *Indianapolis Elks* and *Fort Wayne Sports Club*. While promoting social or recreational activities may be a noble venture, and may even relieve human want to some degree, it does not provide the level of public benefit that Ind. Code § 6-1.1-10-16(a) or its predecessor statutes contemplate as justifying an exemption. Indeed, with regard to its claim of educational use, the Petitioner does not really even argue that

opening the park to motorcycle and ATV riders relates to the type of education offered by public schools.

31. The Petitioner, however, points to its exemption under section 501(c)(3) of the Internal Revenue Code and to the fact that it is open to the public as factors justifying a property tax exemption. Neither of those things changes the Board's analysis. The Tax Court has previously rejected the Indiana Department of Revenue's invitation to adopt the Internal Revenue Service's guidelines for applying section 501(c)(3) as the standard for determining whether an entity is charitable for Indiana state tax purposes, absent direction from the legislature. *Raintree Friends Housing, Inc. v. Ind. Dep't of Rev.*, 667 N.E.2d 810, 816 n. 8 (Ind. Tax Ct. 1996).⁴
32. Similarly, in *National Association of Miniature Enthusiasts ("NAME")*, a trade association that was exempt from federal income tax under section 501(c)(3), was organized to promote public interest in miniatures and used part of its property as a museum and library that was open to the public, by appointment, free of charge. It also had space for workshops. *NAME*, 671 N.E.2d at 220. The Tax Court found as a matter of law that those activities did not support a charitable-purpose exemption. *Id.* at 221.
33. Indeed, the Petitioner's exemption claim is analogous to the claim that the Tax Court rejected in *NAME*. Like the trade association in that case, the Petitioner is exempt from federal income taxation under section 501(c)(3), and it exists largely to facilitate and promote a recreational hobby, albeit in a safe environment. Also like the trade association in *NAME*, the Petitioner made its property available to the public as part of that promotion.
34. Finally, the Petitioner identified several activities at the park aside from its main use—including discrete events hosted by other not-for-profit organizations and riding classes—that it claims qualify as educational or charitable. The Respondent argues that at least

⁴ In some instances, the legislature has made section 501(c)(3) status a statutory element of a particular exemption. *See e.g.*, I.C. § 6-1.1-10-16.5 (exemption for certain tracts of land that are under or adjacent to a lake or reservoir). The legislature has not done so for exemptions under Ind. Code § 6-1.1-10-16(a).

some of those events, such as the Boogie, do not qualify. And as the Respondent pointed out, the park was open 152 days per year. Taken together, the events and classes that the Petitioner identified do not come close to occupying the park for half those days. Furthermore, in most instances the Petitioner did not even claim those activities comprised all, or even the majority, of the park's use on the days that they occurred. At most, any charitable or educational activities were only incidental to the park's predominate social and recreational use. They do not support an exemption.

SUMMARY OF FINAL DETERMINATION

35. Because the Petitioner used the park predominately for social and recreational purposes it does not qualify for an exemption under Ind. Code § 6-1.1-10-16(a). The Board therefore finds in favor of the Respondent and holds that the Petitioner's real and personal property is 100% taxable for the 2008 and 2012 assessment years.

This Final Determination of the above captioned matter is issued on the date first written above.

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.