

**State of Indiana
Board of Tax Review**

MAAP Services, Inc.,)	On Appeal from the Lake County Board
)	of Review
Petitioner,)	
)	Petition for Review of Exemption, Form 132
v.)	
)	Petition No. 45-042-97-2-8-00101
Lake County Board of Review,)	Personal Property
)	
Respondent.)	

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 the personal property owned by MAAP Services, Inc. qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under a claim of charitable purpose.

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 made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, MAAP Services, Inc. (MAAP) filed an Application for Property Tax Exemption, Form 136 with the Lake County Auditor. The Form 136 was filed on May 14, 1997. The Lake County Board of Review (County Board) denied the application and gave MAAP notice on June 24, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-3, MAAP filed a Form 132 petition seeking a review by the State. The Form 132 petition was filed July 14, 1998. Note, MAAP actually filed its appeal on the Form 131, Petition for Review of Assessment. However, because MAAP properly filed an application for exemption, Form 136, at the lower level, the State will view MAAP's Form 131 petition as a request for review of exemption, Form 132 and will act accordingly.
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 21, 1999, before Hearing Officer Angela Smith-Jones. Ms. Kathryn D. Schmidt, Attorney-at-Law, Ms. Susan J. Moreno, President and Founder of MAAP, and Ms. Donna K. Burnham, Secretary, were present at the hearing on behalf of MAAP. Ms. Sherry Feuerborn and Ms. Bonnie Kirrin, were present on behalf of the County Board.
5. At the hearing, the subject Form 132 Petition was made a part of the record as Board Exhibit A and the Notice of Hearing was marked as Board Exhibit B. In addition, the following exhibits were submitted to the State Board:

Petitioner's Exhibit 1 – A copy of the Certificate of Incorporation for MAAP.

Petitioner's Exhibit 2 – A copy of the Articles of Incorporation.

Petitioner's Exhibit 3 – A copy of the By-laws and the purpose of MAAP.

Petitioner's Exhibit 4 – A copy of a determination letter from the Internal Revenue Service.

Petitioner's Exhibit 5 – A brochure for MAAP.

Petitioner's Exhibit 6 – A publication written by Ms. Moreno regarding high functioning persons with autism.

Petitioner's Exhibit 7 – A publication co-authored by Ms. Moreno regarding education of high functioning persons with autism.

Petitioner's Exhibit 8 – A copy of the newsletter published by MAAP.

Respondent's Exhibit A – A copy of the 1996 Income and Expense statement for MAAP.

Respondent's Exhibit B – A copy of the 1995 Income and Expense statement for MAAP.

Respondent's Exhibit C – A copy of the 1994 Income and Expense statement for MAAP.

Respondent's Exhibit D – A copy of a letter to the Lake County Auditor from MAAP explaining the manner by which MAAP makes "charitable contributions".

6. The property subject to this appeal is office equipment and supplies located at 124 North Main Street, Crown Point, Center Township, Lake County. The year for which exemption is claimed is 1997. The Hearing Officer did not view the subject property.
7. MAAP is an Indiana not-for-profit corporation organized for the purposes related to autism, such as (1) providing information to the general public regarding more able autistic people; (2) providing information and support to families of more able autistic people; (3) providing information and support to more able autistic people; and, (4) providing a newsletter about more able autistic people. (Pet. Ex. 1 and 3; *Schmidt testimony*.)
8. MAAP was created by Ms. Moreno in response to her own daughter's situation. MAAP creation was aided through the development of association with other families attending conferences pertaining to autism. At the beginning, twenty-five families were involved in MAAP. Currently, MAAP's membership includes 10,000 families and covers 43 foreign countries. This has been accomplished without formal advertising, only word of mouth. (*Moreno testimony*).

9. MAAP's day-to-day operations are carried out by Ms. Moreno with assistance from Ms. Burnham on a part-time basis and one other person who works one day a week. The day-to-day activity of MAAP would include responding to correspondence or telephone calls from families who have had a loved one diagnosed with autism. MAAP's purpose is to provide comfort, motivation, and as much information as is available to assist the families through this trying time. MAAP provides referrals to families to obtain any additional information not readily available to MAAP. (*Moreno testimony*).

10. The Lake County and Porter County school corporations rely on assistance from MAAP with regard to "mainstreaming" children with autism in their educational programs. When contacted by the school administration, Ms. Moreno meets with the instructors to provide assistance and guidance in teaching the child in the class room. Ms. Moreno, when meeting with a teacher, discusses the technical and emotional needs of the child and explains the different ways in which autistic people access information in their environment. Although MAAP charges for these services provided in other states or countries, in the local area, for instance Lake County, MAAP provides all materials, consultations, etc. at no charge. (*Moreno testimony*).

11. Ms. Moreno is recognized as a knowledgeable person in the field of autism. Ms. Moreno has been a keynote speaker at the National Conference for Autism and hosts a biennial conference held at the University of Indiana attended by speakers from all over the world in the field of autism. (*Moreno testimony*).

12. The newsletter published by MAAP serves as a reference source for information on high functioning individuals with autism for professionals and parents alike. The newsletter also serves as a source of camaraderie for parents of autistic children. (*Burnham testimony*).

13. The publication authored by Ms. Moreno and distributed by MAAP is written in non-technical language to better serve parents and educators for ease of understanding. Harvard Medical School purchased ten copies of this publication. (*Moreno testimony*).
14. MAAP believes that, by statute, it is entitled to an exemption for charitable purposes. MAAP relies on the Court's view of charitable given in *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E. 2d 218, 219 (Ind. Tax 1996) (“...to qualify for a charitable purpose, the organization must show relief of human want, manifested by obviously charitable acts different from the everyday purposes and activities of man in general.”) MAAP contends that it qualifies under this standard. (*Schmidt testimony*).
15. The personal property claimed exempt is used by MAAP to further its charitable purpose.
16. The County Board denied MAAP's exemption application because MAAP did not show that it made a 5% charitable contribution. (*Kirrin testimony*).

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.

Burden

2. The courts have long recognized that in the administrative review process, the State is clothed with quasi-judicial power and the actions of the State are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State has the ability to decide the administrative appeal based upon the evidence presented.

3. 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).
4. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239 (Ind. Tax 1998)).
5. If the taxpayer were not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
6. 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).
7. In the event the taxpayer sustains his burden, then the burden shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.
8. If the taxpayer fails to meet his burden of proof at the administrative level, the State does not have to support its decision with substantial evidence if that decision is challenged in court. *Whitley*, 704 N.E. 2d at 1116-21.

Constitutional and Statutory Basis for Exemption

9. 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.
10. 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.
11. 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.

Basis of Exemption and Burden

12. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
13. 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).

14. 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 would otherwise have paid, and this should never be seen as an inconsequential shift.
15. This is why worthwhile activities or noble purpose is not enough to justify 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)).
16. 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).

Conclusions Regarding the Exemption Claim

17. MAAP seeks property tax exemption under a charitable claim. MAAP believes that the service it provides meets the standard of charitable purpose recognized by the Court in *NAME*. The County Board denied the exemption claim because a 5% charitable contribution was not demonstrated by MAAP.
18. Public policy supports a broad interpretation of charity and the Indiana courts have broadly construed the term “charitable”. *Raintree Friends Housing, Inc. v.*

Indiana Department of Revenue, 667 N.E. 2d 810, 814 (Ind. Tax 1996); *State Board of Tax Commissioners v. Wright*, 139 Ind. App. 370, 374-74, 215 N.E. 2d 57, 60 (1966); *City of Indianapolis v. The Grand Master, etc., of the Grand Lodge of Indiana*, 25 Ind. 518, 522-23 (1865).

19. Words, unless statutorily defined by the legislature, used within a statute are to be given their plain, ordinary, and usual meaning. (*Raintree, supra*; *Town of St. John v. State Board of Tax Commissioners*, 665 N.E. 2d 965, reversed *Boehm v. Town of St. John*, 675 N.E. 2d 318, or remand 690 N.E. 2d 370, opinion supplemented 691 N.E. 2d 1387 (Ind. Tax 1996); *Knauf Fiber Glass, GmbH v. State Board of Tax Commissioners*, 629 N.E. 2d 959 (Ind. Tax 1994). The term “charity” is not defined under Ind. Code § 6-1.1-10-16; therefore, the “plain, ordinary, and usual meaning” of “charity” must be applied in this matter.
20. In *Raintree*, the Court turned to *Black’s Law Dictionary, Fifth Edition*, for the definition of “charity”. “Charity” is defined in *Black’s* as “[a]n institution engaged in, public benevolent purposes...[t]o attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation,...of gain or profit by [the] donor...” These acts, being different from everyday acts of man, must be for the purpose of relieving the deficiencies of mankind. *NAME*, 671 N.E. 2d at 218. Charity is not solely demonstrated in terms of dollars; rather, charity can also be shown through the actions of others.
21. Thus, charitable purposes are those providing a public benefit through acts intended for the betterment of mankind, especially those in need, without thought of financial gain. Generally, to a public benefit, the activity is one that fulfills a need that might otherwise have to be provided or dealt with by the government. “A justification for the tax exemption is the public benefit; the purpose of the exemption...is to insure that property and funds devoted to one public benefit are

not diminished by being diverted through taxation for another public benefit.”

Wright, supra.

22. The County Board denied MAAP’s request for exemption because MAAP did not demonstrate a 5% charitable contribution and, as such, its activities did not represent charitable activities. The County Board was mistaken. As stated above, charitable acts are not necessarily measured in dollars. Rather, charitable acts are measured by demonstrations of bettering mankind.
23. Therefore, the question before the State is whether MAAP’s services are of the sorts that provide relief to those in need. MAAP, through the day-to-day activity of Ms. Moreno, Ms. Burnham and its other employee, provides comfort, encouragement and a source of education for parents, and families, of autistic children. MAAP also provides assistance to the educational sector with regard to mainstreaming autistic students into the day-to-day educational process. MAAP performs this function with no expectation of gain or reimbursement from the families. This service is provided at no charge to the families.
24. MAAP does charge a fee when consultation services are provided. However, these fees do not automatically exclude MAAP from the exemption provided under Ind. Code § 6-1.1-10-16. (*State Board of Tax Commissioners v. Methodist Home of the Aged*, 241 N.E. 2d 84 (Ind. App. 1968)). MAAP charges a fee when consulting with the education sector only when the school corporation is located outside the State of Indiana or outside the United States to cover the cost of materials, travel, and other general expenses and, as such, does not represent a means to realize financial gain through the services provided. Therefore, the mere fact that MAAP charges these fees does not prevent MAAP from obtaining property tax exemption.
25. MAAP presented evidence and testimony that demonstrates its charitable nature. Clearly, by providing emotional and educational support to families of autistic children and autistic persons, MAAP is engaged in an activity different than

everyday activity. Also, the guidance, consultation, and assistance provided to the educational sector by MAAP certainly relieves the government of the financial burden of tending to this need as part of the “mainstreaming” process. As such, MAAP is providing a service that might otherwise have to be supported by public tax dollars.

26. MAAP had the burden of showing its property specifically fell within the parameters of the exemption statute. MAAP was required to show that its personal property was used to carry out charitable purposes. MAAP has met this burden. MAAP has shown that its personal property is used in the provision of services to both families of autistic children as well as the educational sector to aid in the “mainstreaming” process.

27. For all of the above reasons, the personal property owned and used by MAAP qualifies for 100% property tax exemption pursuant to Ind. Code § 6-1.1-10-16(e).

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