

**STATE OF INDIANA
BOARD OF TAX REVIEW**

MAPLE GROVE BAPTIST CHURCH OF LAWRENCE , INC.,)	On Appeal from the Marion County Board of Review
)	
Petitioner,)	
v.)	Petition for Review of Exemption Form 132
)	
MARION COUNTY BOARD OF REVIEW,)	Petition No. 49-407-96-2-8-00155
)	
Respondent.)	Parcel No. 4005638

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 real property and improvements owned by Maple Grove Baptist Church ("Church") qualify for property tax exemption for religious purposes under Ind. Code Section 6-1.1-10-21(a) or under Ind. Code Section 6-1.1-10-16.

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 be considered a finding of fact.

2. The real property and improvements at issue are located at 6850 E. 46th Street, in Lawrence Township in Marion County, Indiana, and comprise a church building, a house, which has been denominated a parsonage, and a barn. Although the Church is designated as and was referred to as “incorporated” by all parties in this action, documentation of the same was not provided at the hearing in this matter. The Church is believed to be an Indiana not for profit corporation.

3. The chronology of the case involves a series of omissions beginning with the Church’s failure to file for a property tax exemption prior to the May deadline for the tax year 1996, payable 1997.

4. The Church maintains it was previously exempt, although documentary evidence of the same was not provided. The testimony concerning the existence of the exemption in prior years was not disputed by the Respondent. The Church alleges it received its first notice of taxation when it received the first tax billing.

5. The Church alleges that it did not receive a notice from the auditor stating that the Church had failed to file for its exemption, which had been in effect for the prior year, which notice is described in Ind. Code § 6-1.1-11-3-5. There was no evidence presented at the hearing that the auditor did in fact forward any notice to the Church. The Church maintains that once the tax bill was received the Church then filed its application for exemption.

6. Pursuant to Ind. Code § 6-1.1-11-3, then Pastor Wayne Pontious, on behalf of the Church, filed a Form 136, Application for Property Tax Exemption, for the tax

year 1996 with the Marion County Board of Review. The application was filed on April 28, 1997 and claimed exemption for religious purposes under Ind. Code § 6-1.1-10-16.

7. The County Board apparently accepted the Petition as timely and issued a Form 120, Notice of Action, on May 16, 1997. A copy of the notice is attached and included in Board Exhibit "A," the Form 132 petition later filed in this matter.
8. The County Board's Notice omits any percentages or notations of any kind under the "Action" column for either "Exemption Disallowed" or "Exemption Allowed." The "Description of Property" section gives the parcel number and contains the following language set forth below exactly as it appears on the Notice:
 - Use of the parsonage by
caretaker
 - Partial exemption on Improvement
 - Land 100 %
 - \$ 37770 Land
 - \$ 42230 Imp.
9. The Church failed to take any action and again received a tax bill in the fall of 1997, which was alleged to have been prepared on or about August 30, 1997, and alleged to have been mailed to the Church on or about September 8, 1997. Upon receipt of the second tax bill, the Church sought legal counsel and filed a Form 132, Petition for Review of Exemption, several months after the Notice of Action by the County Board in May.
10. The Church alleges that the Notice of Action by the County Board was deficient in that it is unclear on its face and that it failed to apprise the Church that their exemption for the parsonage had been partially denied by the County Board. The Church alleges that it therefore did not have notice of adverse action, which would indicate the need to begin the review process with the State within thirty (30) days as required by statute. The Church further alleges that within (30)

days of receipt of the second tax bill the Church took action in perfecting its appeal to the State by filing the Petition for Review on October 6, 1997, and that the Petition for Review is therefore timely filed.

11. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held in this matter on September 20, 2000 before Hearing Officer Sandra M. Oakes. The Church was represented by counsel Philip Thrasher and the current Pastor, Carl Coffey, Sr., and Ms. Karen Owens, Treasurer and resident of the parsonage or house at issue. The County Board was represented by Mr. Andrew Seiwert, Assistant Corporation Counsel for the City of Indianapolis and Marion County, and by Ms. Patsy Sharpe, Chief Deputy, Marion County Assessor's Office. Testimony and documents were received into evidence at the hearing.

12. At the hearing, the Form 132 Petition with attachments was made a part of the record and labeled Board Exhibit "A." The attachments include a Limited Power of Attorney executed by the Church for Philip Thrasher. In addition, the following documents were submitted to the State:

Petitioner's Exhibit 1: September 19, 2000, Correspondence from Philip Thrasher to the State Board with attachments:

- a. Form 11, Notice of Assessment;
- b. 1995 property record cards;
- c. Form 136, Application for Property Tax Exemption;
- d. Form 120, Notice of Action;
- e. Tax bill;
- f. Affidavit of Karen Owens;
- g. Photographs of subject property;
- h. Copy of *Alte Salems Kirche, Inc. v. SBTC*, (Ind. Tax 2000); and
- i. Copy of *LeSea Broadcasting Corp. v. SBTC*, (Ind. Tax 1988).

Respondent's Exhibit A: A copy of the definition of "parsonage" from Webster's Dictionary

13. Additionally, the Respondent asked the State Board to take judicial notice of Ind. Code § 6-1.1-10-21, 6-1.1-15-3(c), and 6-1.1-11-5.

14. The house building or parsonage, is owned by the Church, and from January 1995 to the present, has been occupied solely by Mrs. Owens and her husband. They have never paid rent for residing in the house and they maintain the buildings and property free of charge. While there was renovation in the Church building, for approximately one month, Mrs. Owens taught Nursery School and First Grade Sunday School classes in the house. In addition there were times when the Sunday School Classes were taught in the house as well. Persons who have been in need of charity have come to the house and have been interviewed at the house to determine how the church could help them. The Church office is located in the house just off the kitchen and contains a desk area, computer and tape recorder used for Church business, such as the preparation of Sunday school materials and for dubbing tapes for the shut-ins. The kitchen area of the house is used for Church meetings. The living room is used for Church meetings such as prayer meetings or business meetings of the Church. The office is utilized every day for Church business. The yard contains two swings and a picnic table for members of the Church or public to use; these are owned by the Church. The barn has a basketball goal attached to it above the concrete slab for the kids, and the barn contains equipment that they use to maintain the yard and buildings, such as a tractor and ladders. The equipment belongs to the Church and church members use it. Before they moved into the house, the Church had been vandalized. Since they are now there continuously, there have been no problems with vandalism and so they serve an important security function by living in the house. *Owens Testimony. Petitioner's Exhibit 1, Item F.*

15. There is office space in the Church building but it is not utilized due to the previous vandalism and the fact that the curtains at the Church do not cover the full window. The office area at the Church building itself is utilized as a changing room following baptisms. *Owens Testimony.*

16. She has been the treasurer since 1995 and she believes the exemption began in 1994 or early 1995. In 1995 or 1996 she never saw any tax bills or paid any tax bills. Since she had all of the checks in her possession at that time, it is unlikely anyone else in the Church paid a tax bill. *Owens Testimony.*

17. When he became the Pastor at Maple Grove on March 1, 2000, Mr. Owens was the spiritual leader on site, so to speak, and he was the person designated by the Association of Southern Baptists that Pastor Coffey was to contact and interview with when he first came to the Church. The Owens take care of the yard and clean the property free of charge as part of their religious beliefs to take care of God's property. He agrees with the testimony of Mrs. Owens about the use of the house building or parsonage, but he believes the house is utilized more often than Mrs. Owens' testimony indicated. Prior to being the Pastor, Pastor Coffey was in the home probably six to eight times over a three-month period discussing the Church. At this time, he is in the parsonage on the average of twice per week discussing Church matters with Mrs. Owens, as she is the Treasurer and with Mr. Owens who is an inactive ordained Pastor. He visits Mr. Owens fifty percent of the time because Mr. Owens is ill and fifty percent of the time to discuss the Church. These conversations could take place over the telephone. *Coffey Testimony.*

18. There are no income-producing activities at the house or on the Church property. He does not know if the house was exempt prior to 1996, but he thought it was. *Coffey Testimony.*

19. It is the customary practice to mail out the Form 120, Notice of Action, on the day that it is dated. The Form 132 was filed October 6, 1997 and forwarded to the Assessor's office on October 7, 1997. The exemption was being sought for 1996 and the Form 136 application was filed on April 28, 1997. The improvements at issue are the Sanctuary and Fellowship Hall, the parsonage and the storage barn. It was her opinion that the exemption was partially disallowed because the

Pastor did not occupy the house and the Assessor's file did not contain an affidavit regarding the use of the parsonage. *Sharpe Testimony*.

20. The hearing officer did not view the subject property.

Conclusions of Law

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

A. Burden In General

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, 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. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
5. 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, n. 13 (Ind. Tax 1998)).

6. If the taxpayer is 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*.
7. 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).
8. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.

B. Property Tax Exemption

9. Generally, all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
10. Article 10, § 1 of the Indiana Constitution reads:

(a) The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property real and personal. The General Assembly may exempt from property taxation any property in the

following classes:

- (1) Property being used for municipal, educational, literary, scientific, religious, or charitable purposes.

11. Article 10, § 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. Ind. Code § 6-1.1-10-16 is the provision enacted by the General Assembly for the exemption of property owned, occupied and used for the above stated purposes in general. It reads in pertinent part:

- (a) 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, or charitable purposes.

12. The justification for tax exemption is the public benefit. *State Board of Tax Commissioners v. Wright* (1966), 139 Ind. App. 370, 215 N. E. 2d 57. The purpose of tax exemption, whether for religious or other classification, is to insure that the property and funds devoted to one public benefit are not diminished by being diverted through taxation for another public benefit. *Id.*

13. The grant of tax exemption releases property from the obligation of bearing its share of the cost of government and disturbs the equality and distribution of the common burden of government upon all property. *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 280 (Ind. Tax 1989), *aff'd.*, 571 N.E. 2d 1247 (Ind. 1991). The grant of tax exemption shifts the tax burden to others or results in the loss of tax revenue. *NAME*, 671 N.E. 2d at 220.

14. Accordingly, exemptions are strictly construed against the organization seeking exemption and in favor of taxation. *Id* at 220; *Indiana Association of Seventh-Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938,

(Ind. Tax 1987). A taxpayer seeking exemption bears the burden of proving that it is entitled to exemption. *NAME*, 671 N.E. 2d at 220 (citing *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 611 N.E. 2d 708, 714 (Ind. Tax 1993)). As a condition precedent to being granted an exemption for charitable or educational purposes, the taxpayer must demonstrate that it provides "a present benefit to the general public...sufficient to justify the loss of tax revenue." *St. Mary's Medical Center*, 534 N.E. 2d at 279.

15. In determining whether the property qualifies for exemption, the predominant and primary use of the property controls. *NAME*, 671 N.E. 2d at 220, (citing *Fort Wayne Sports Club*, 258 N.E. 2d at 881 and *Indianapolis Elks Buildings Corp. v. State Board of Tax Commissioners*, 251 N.E. 2d 673, 679 (Ind. App. 1969)).
16. The use of the property for exempt purpose is the minimum requirement for exemption, but the General Assembly may add other requirements when enacting exemption statutes. *Sangralea Boys Fund, Ind. v. State Board of Tax Commissioners*, 686 N.E. 2d 954, n. 2 (Ind. Tax 1997).

C. Timeliness

17. The County Board accepted the Form 136 application filed herein as timely, and at least attempted to address the merits of the application. At the hearing, the Respondent did not argue that the Form 136 application was untimely.
18. Likewise, whether or not the county auditor mailed notice that the exemption application had not been filed is equally inconsequential to the determination in this matter in that the failure to do so merely extends the time in which the Form 136 application is to be filed and approved to the first Monday in November of the following year, and the Petitioner's application was filed and approved within that time frame. Ind. Code §6-1.1-11-5(c).
19. The issue of timeliness, then, relates to the filing of the Form 132, Petition for

Review of Exemption, with the State, which the Respondent argues is untimely filed.

20. In support of its position, the Respondent argues that the language on the Form 120 Notice, "Partial Exemption on Improvement," should have at least alerted the Church that it did not obtain all of the relief requested. While the Respondent's point may be well stated, it is nonetheless apparent that the Form 120 Notice is ambiguous and deficient in providing notice to the Church that the exemption for the parsonage building had been disallowed and deficient in identifying the percentages allowed and disallowed. The Church cannot reasonably be expected to lodge an objection to an action when the action itself is unclear.
21. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to appraise interested parties...and afford them an opportunity to present their objections." *Mynsberge v. State Board of Tax Commissioners*, 612 N.E.2d 1129, (Ind.Tax 1993) quoting *Elizondo v. Read*, 588 N.E.2d 504 (Ind. 1992)
22. Thus, the Church's tax statement served as notice of the action of the County Board, and started the thirty (30) day limitations period for appeal from that determination. *Mynsberge v. State Board of Tax Commissioners*, 612 N.E.2d 1129, (Ind. Tax 1993). The evidence was undisputed that the notice to the taxpayer was mailed September 8, 1997 and the October 6, 1997 filing of the Form 132 petition fell within thirty (30) days of that date. Thus, the Form 132 Petition for Review was timely filed.

D. Conclusions Regarding Religious Purposes Claim

23. The Church maintains that the County Board's grant of a partial exemption appears to concern the parsonage building itself. The Form 120 Notice is not specific as to the status of the other buildings, the Church building itself and the

barn, although the Chief Deputy Assessor testified that it was her opinion that the partial disallowance of the exemption pertained to the parsonage.

24. With regard to the parsonage building, the Respondent argues that Ind. Code § 6-1.1-10-21 provides specifically for the exemption of buildings used as parsonages and that as a more specific statute, it controls over the more general provision in Ind. Code § 6-1.1-10-16. Respondent argues that the Church is not entitled to the exemption under subsection 21(a) in that the Church has not complied with its provisions.

25. Ind. Code § 6-1.1-10-21 provides, in pertinent part:

The following tangible property is exempt from property taxation if it is owned by, or held in trust for the use of, a church or religious society:

 - i. A building which is used for religious worship.
 - ii. Buildings that are used as parsonages.
 - iii. The pews and furniture contained within a building which is used for religious worship.
 - iv. The tract of land, not exceeding fifteen (15) acres, upon which a building described in this section is situated.

26. Ind. Code § 6-1.1-10-21 (b) states that to obtain an exemption for a parsonage, the church must provide the county auditor with an affidavit at the time the church applies for the exemption stating that the parsonage houses one of the church's pastors and that it is not being used to make a profit.

27. By the evidence presented, the Church's argument seems to be threefold. First, the Church appears to argue that Mr. and Mrs. Owens were, in essence, "pastors in fact". They took care of the Church grounds, Mrs. Owens was the treasurer and took care of Church business, Mr. Owens was an "inactive ordained pastor," previously having held the role of deacon in the church, he was also the uncompensated custodian of the Church and grounds, and finally, they were integral and important members of the Church. If that were so, then the

statutory requirement under Indiana Code § 6-1.1-10-21, that the parsonage house one of the church's *pastors*, would be satisfied; however, even assuming *arguendo*, that this were true, the argument does not address the Church's failure to submit an affidavit stating the same at the time of filing the original Form 136 application as required by subsection 21(b). This argument is not persuasive.

28. Second, the Church argues that just designating the house as a "parsonage" does not in and of itself make it a parsonage necessitating application under Ind. Code § 6-1.1-10-21, and as such the building itself, regardless of designation, may be exempted under Ind. Code § 6-1.1-10-16 if it is owned, used and occupied for religious purposes.
29. Third, the Church further argues that even if it is a "parsonage," within the generally accepted definition of the same, it can still be granted exemption under Ind. Code 6-1.1-10-16, if it is property owned, used, and occupied for religious purposes.
30. Given the Court's holding in *Lincoln Hills Development Corp. v. Indiana State Board of Tax Commissioners*, 512 N.E.2d 1360, (Ind. Tax 1988), the Respondent's argument that Ind. Code § 6-1.1-10-21 provides the sole authority for exemption of parsonages is not persuasive. (The Tax Court held that not-for-profit corporation was not precluded from claiming exemption under statute exempting property owned, occupied, and used for educational, literary, scientific, religious or charitable purposes by presence of unrelated exemption in another statute applicable to residential facilities for aged licensed under particular statute and operated by not-for-profit corporation,) The statutes at issue grant unrelated exemptions and the provisions are not in conflict, therefore the rule of statutory construction that more specific provisions control over general provisions is not applicable. *Lincoln Hills Development Corp. v. Indiana State Board of Tax Commissioners*, 512 N.E.2d 1360, (Ind. Tax 1988). See

also, *Don Meadows Motors, Inc., v. State Board of Tax Commissioners*, 518 N.E.2d 507,508 (Ind. Tax 1988).

31. The Church did not meet its burden in establishing that it is entitled to exemption under the provisions of Ind. Code § 6-1.1-10-21 in that the Church did not comply with the statute in submitting the required affidavit with its Form 136 filing. Even had the Church submitted an affidavit, the parsonage building does not house one of the Church's pastors and therefore the building is not entitled to exemption under this statute.
32. Determining the eligibility for exemption under the Ind. Code § 6-1.1-10-16 for religious purposes, requires examination of the use of the property.
33. The evidence showed that the house building, or parsonage, was and is currently occupied by Mr. and Mrs. Owens, that the two of them perform duties for the Church without compensation and that the two oversaw the renovation of the parsonage building and oversee the maintenance of the Church property. The provision of these services ultimately saves the Church expense in not having to hire out these services.
34. The evidence further demonstrated that the presence of the Owens in the home on the Church property reduces vandalism, which was previously a problem for the property.
35. The house itself is used for Church business meetings and other meetings among members of the Church. Nursery and Sunday school services for the children have been provided at the house. The presence of someone at the property provides a contact with the neighborhood and general public for times when the Church is not in service. The Church office is located within the house and the Pastor meets with the Owens at the house to discuss Church business. The evidence demonstrated that the house is used for religious purposes and for activities that are reasonably necessary to carrying out the religious purposes of

the Church.

36. The County Board's determination apparently granted a 100% exemption on the land and does not appear to disallow the exemption on the Church building or barn, which houses lawn and other equipment used for the maintenance of the property. The 100% exemption of the barn is consistent with the Court's holding in *Alte Salems Kirche*, 733 N.E.2d 40, (Ind. Tax 2000) (barn used by nondenominational church to store its maintenance tools was reasonably necessary for the maintenance of church's charitable, religious and educational purposes, and thus exempt).
37. Thus, in considering the Church's religious purposes claim, the issue remains whether the record demonstrates the predominant use of the property.
38. Property must be predominantly used for the exempt purpose. Ind. Code § 6-1.1-10-36.3. "Predominant use" is defined as property used or occupied for the exempt purpose more than 50% of the time. *Id.*
39. Although the house obviously provides shelter for the Owens, the predominant use of the house is to carry out activities that are reasonably necessary to further the exempt purpose of the Church. This evaluation is consistent with the Tax Court's holding in *Alte Salems Kirche* wherein a mobile home with paying tenants was found to be 100% exempt where the presence of the tenants and the mobile home served to deter vandalism and ultimately decrease insurance costs for the church.
40. This evaluation is also consistent with *Indiana Association of Seventh-Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 935 (Ind. Tax 1987), wherein the Court held that the mere fact that a building did not qualify as "parsonage" for purpose of property tax exemption, did not mean that building did not qualify under alternate exemption as building used for religious purposes.

41. For the above reasons, the State finds that Maple Grove Baptist Church is entitled to 100 % exemption for religious purposes under Ind. Code § 6-1.1-10-16 for the land and improvements, including the church sanctuary and fellowship hall, the barn, and the house or “parsonage,” for the tax year 1996, payable 1997.

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