

**STATE OF INDIANA
Board of Tax Review**

MAPLE RIDGE COMMUNITY CHURCH)	On Appeal from the Tippecanoe County
)	Property Tax Assessment Board of
Petitioner,)	Appeals
)	
v.)	Petition for Review of Exemption
)	Form 132
TIPPECANOE COUNTY PROPERTY)	Petition No. 79-022-96-2-8-00041
TAX ASSESSMENT BOARD OF)	Parcel Nos. 168059060170
REVIEW,)	168059060180
)	
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 land qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for religious purposes.

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. Pursuant to Ind. Code § 6-1.1-11-3, Maple Ridge Community Church (Maple) filed an application for property tax exemption with the County Board of Review (County Board) on May 16, 1996. The County Board denied the application on September 23, 1997 for the 1997 petition, and gave Memorial proper notice of denial. The County Board denied the application on October 22, 1996.

3. Pursuant to Ind. Code § 6-1.1-11-7, Memorial filed a Form 132 petition seeking a review of the County Board's action by the State. The Form 132 petition was filed November 14, 1996.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 18, 1999, before Hearing Officer Angela Smith-Jones. Testimony and exhibits were received into evidence. Bradford Bush, pastor, represented Maple. Harold Red Strange represented the County Board.

5. At the hearing, the subject Form 132 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. A request for additional information from Maple was labeled Board Exhibit C. In addition, the following items were received into evidence:
Petitioner Exhibit 1 – Articles of incorporation and amendment.
Petitioner Exhibit 2 – Floor plans by FBi Buildings, Inc.
Petitioner Exhibit 3 – 1998 financial report & proposed budget for 1999.
Petitioner Exhibit 4 – Cover letter for additional evidence received on May 26, 1999.
Petitioner Exhibit 5 – Building fund financial statements.
Petitioner Exhibit 6 – Documents and letters from C&S Engineering.

Petitioner Exhibit 7 – Documents and letters from Myler Companies.

Petitioner Exhibit 8 – Current contract with FBi Buildings

Petitioner Exhibit 9 – Drawings and blueprints of building plans.

Respondent Exhibit 1 – Transcript of County Board hearings.

6. The subject property is located in the University Farms sub-division, West Lafayette, Indiana (Tippecanoe County, Wabash Township). The tax year under appeal is 1996. The Tippecanoe County Board determined that the subject is 100% taxable.
7. At the hearing, the Hearing Officer requested additional information from Maple. (Board Exhibit C). This information was received on May 26, 1999 and is labeled Petitioner Exhibits 4 through 9.

Additional Facts

8. The subject is vacant land purchased by Maple in 1989 to be used for the future home of a new church. The subject land is comprised of two (2) different lots (Lots 231 & 232) in the University Farms sub-division.
9. The church, by 1991, had accumulated some \$259,000 in a building fund. In 1992, Maple accumulated an additional \$28,570 in 1992.
10. In 1991, Maple also contracted C & S Engineering to do some preparation of the Site, Utility, and Grading Plan. The cost of the services were \$1440.00 and was completed by July 10, 1992. (Petitioner Exhibits 4 & 6).
11. In 1992, Maple entered into negotiations with Myler Companies to do the site engineering and the initial drawing phase of the new church. According to a letter from Myler Companies to Pastor Brad Bush, the cost of the drawing phase was to be \$51,930.

12. Myler Companies did present a plan for the building (Petitioner Exhibit 9), however there is no date on the plans to show when they were submitted to Maple.
13. Maple collected an additional \$4,610 for the building fund in 1993; \$4,433 in 1994; \$2,266 in 1995; \$5,258 in 1997; and \$28,354 in 1998. There was no information presented about activities in 1996.
14. In 1998, Maple received a contract from FBi Buildings, Inc. for the planning and building of the new church. On March 1, 1999 Maple accepted this contract, and bid for \$4,595,010.
15. On March 1, 1999, Maple signed an addendum to the contract authorizing FBi Buildings, Inc. to proceed with the design development phase at a cost of \$200,000. The contract also included an additional \$26,800 for drainage plan and engineering and \$7,500 for soil boring and site condition analysis.

Conclusions of Law

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

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 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*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
5. 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*.
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 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.
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 State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, the Petitioner claims exemption under Ind. Code § 6-1.1-10-16 which provides that all or part of a building is exempt from property taxes if it is owned, occupied, and used for educational or charitable purposes. The Petitioner also claims exemption for personal property. Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt from property taxation if it were a building. Ind. Code § 6-1.1-10-16(e).

11. In Indiana, the fact that a nonprofit entity owns the property under examination 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 property is used but on how 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 predominantly 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*, 671 N.E. 2d 218 (Ind. Tax 1996)(NAME). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
15. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. NAME, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
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. Maple purchased vacant land in 1989 to be used for construction of a new church. Maple is requesting this land be exempt for tax year 1996.

18. Ind. Code § 6-1.1-10-16(d) states: “A tract of land is exempt from property taxation if:
- (1) it is purchased for the purpose of erecting a building which is to be owned, occupied, and used in such a manner that the building will be exempt under subsection (a) or (b);
 - (2) the tract does not exceed: (C) fifteen (15) acres; and
 - (3) not more than three (3) years after the property is purchased, and for each year after the three (3) year period, the owner demonstrates substantial progress towards the erection of the intended building and use of the tract for the exempt purpose. To establish that substantial progress is being made, the owner must prove the existence of factors such as the following:
 - (A) Organization of and activity by building committee or other oversight group.
 - (B) Completion and filing of building plans with the appropriate local government authority.
 - (C) Cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin within three (3) years.
 - (D) The breaking of ground and the beginning of actual construction.
 - (E) Any other factor that would lead a reasonable individual to believe that construction of the building is an active plan and that the building is capable of being completed within six (6) years considering the circumstances of the owner.
19. The subject property is vacant land consisting of 7.2 acres and was purchased with the intent to build a new church that would be exempt under subsection (a) or (b) of Ind. Code § 6-1.1-10-16. However, the main point of contention is whether substantial progress toward the construction of the building has been made.

20. One of the factors listed in the statute is the existence of cash reserves. Maple has a building fund, and the fund has been receiving contributions each year. In 1996, Maple's building fund had over \$290,000 in it.
21. There is no need for Maple to prove each of the factors in subsection (3). The statute clearly states "factors such as" Therefore, the statutes list is not exhaustive, nor is it limited to only those factors.
22. First, Maple must show that within three (3) years of purchase of the land, that they have made substantial progress toward the erection of the building. The land was purchased in 1989. By 1991, there was over \$250,000 in Maple's building fund.
23. In 1991, Maple contracted with C & S Engineering for a site survey. Maple paid \$1,440 to complete the site survey. In 1992, Maple contracted with Mylar Companies to draw up plans for a new church. Maple paid Mylar Companies \$51,930 for the plans.
24. It appears as though substantial progress was made in the first three (3) years. A company had prepared a site survey, plans for a building were completed, and Maple had over \$250,000 in a building fund. However, each year after the three (3) year period, Maple must continue to show substantial progress toward the erection of the building.
25. From 1993 through 1996 there were no other plans, or work done at the site of the proposed church. Maple still maintained a building fund, and received contributions to the building fund each year from 1993 through 1995 ranging from \$2,266 to \$5,258.
26. Maple did not present a financial summary of tax year 1996, therefore there is no information about the contributions or activities of the building fund for that year.

However, Maple must show that substantial progress was made in 1996 toward the erection of the building to be used for an exempt purpose.

27. There was no evidence introduced showing the existence of a building committee organized at Maple. There was no evidence introduced indicating the building plans completed in 1992 had been filed with any government agency. No evidence was presented indicating that ground had been broken for the construction of the proposed building.
28. Maple did have over \$259,000 in a building fund. This appears to be a substantial amount, which could be used as a down payment. This was the amount on hand in 1991. By 1995, Maple had increased the building fund to \$292,000.
29. While the \$292,000 appears to be a substantial amount, it is not an amount significantly more than the amount on hand in 1991. One of the factors listed is: “Cash reserves dedicated to the project of a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin within three (3) years.”
30. Is the \$292,000 a sufficient amount to indicate construction will begin within three (3) years? In 1992, Maple had over \$280,000 in a building fund, plans for a building, and conducted a site survey. In the next three years it appears from the evidence submitted that the only steps Maple took was to increase the building fund. This leads to the assumption that the \$280,000 was not enough to begin construction within three (3) years of 1992.
31. The question remains for this appeal, is over \$292,000 a sufficient amount to lead a reasonable individual to believe the actual construction can and will begin within three (3) years? If \$280,000 was not enough, is \$292,000? There was no information presented to indicate a down payment for construction. If \$280,000 was not enough, it would be reasonable to assume \$292,000 will not be enough.

32. The final factor listed is would a reasonable individual believe that construction of the building is an active plan and that the building is capable of being completed within six (6) years considering the circumstances of the owner.
33. It appears that the circumstance of the owner have not changed in the previous three (3) years. Is the building an active plan capable of being completed within six (6) years? Given the circumstances of the owner, the lack of activity the previous three (3) years, it appears the plan is not an active plan capable of being completed within six (6) years.
34. From 1993 through 1995, Maple took in an average of \$4,000 each year to the building fund. This is the only activity undertaken those three years. There was no indication of the cost of the church planned in 1992. However the church planned in 1998 had a cost of over \$4,500,000. Collecting \$4,000, or 0.1% of the planned cost, is not substantial progress toward the completion of the planned improvement.
35. There had been no new plans or work done on the site since 1992. For a period of three (3) years Maple only collected an average of \$4,000 per year. There had been no bids for construction by 1996.
36. For all the reasons listed above, Maple did not prove there was substantial progress toward the erection of a building in 1996 to qualify for an exempt purpose on the land. Accordingly, the land is 100% taxable.

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