

**STATE OF INDIANA
Board of Tax Review**

MID-LAND MEALS,)	On Appeal from the Tippecanoe County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petitions for Review of Assessment, Forms 132
)	Petition No. 79-032-01-2-8-00003, and
)	Petition No. 79-032-01-2-8-00004
TIPPECANOE COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	Parcel No. 162-15708-001-9, and
APPEALS,)	Parcel No. 162-15708-002-0
)	
Respondents.)	

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) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issue

Whether the land owned by Mid-Land Meals qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the classifications of a charitable organization.

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, Mid-Land Meals (Mid-Land) filed an application for property tax exemption, Form 136, with the Tippecanoe County Property Tax Board of Appeals (PTABOA) on January 12, 2001. Mid-Land claims 100% of the land under appeal exempt. The PTABOA denied Mid-Land's exemption claim on August 24, 2001 and notified Mid-Land of the determination.

3. Pursuant to Ind. Code § 6-1.1-11-7, Mid-Land filed a Form 132 petition requesting a review by the State. The Form 132 petition was filed on August 30, 2001.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was scheduled for January 23, 2002. Due to the unexpected closing of the Tippecanoe County Government Building, the hearing was rescheduled for February 5, 2002 before Hearing Officer Patti Kindler. Mid-Land was represented by Elaine Brovont, Executive Director. Lawrence Lahrman, Bob McKee, and Lewis Beeler appeared on behalf of the Tippecanoe County PTABOA.

5. At the hearing, the Form 132 petition for parcel number 162-15708-0020 was made a part of the record and labeled as Board Exhibit A. A second petition for parcel number 162-15708-0019, which was not submitted prior to the hearing by the County, was also heard, and is hereby identified as Petition no. 79-032-01-2-8-00004. The original Notice of Hearing on Petition is labeled Board Exhibit B. The rescheduled Notice of Hearing on Petition is labeled Board Exhibit C. The Waiver for Notice of Hearing on Petition signed by the parties to the appeal,

which waves the ten-day minimum advance notice of hearing, is labeled Board Exhibit D. In addition, the following exhibits were received into evidence:

Petitioner's Exhibit 1 – Copy of subject's Federal Tax Form 990 for year 2000

Petitioner's Exhibit 2 - Financial and Compliance Audit, dated 12/31/00

Petitioner's Exhibit 3 – Copy of the subject's By-Laws

Petitioner's Exhibit 4 – Copy of the Articles of Incorporation

Petitioner's Exhibit 5 – Copy of notification of exempt status under 501(c)(3)

Petitioner's Exhibit 6 – Copy of the Mid-Land Meals Newsletter

Petitioner's Exhibit 7 – Copy of the subject's Mission Statement

Petitioner's Exhibit 8 – Copy of the subject's Annual Report.

6. Mid-Land is a not-for-profit charitable corporation governed under Section 501(c)(3) of the Internal Revenue Service. The property appealed was assessed as two separate parcels of commercial vacant land located at 3313 Concord Road, formerly known as 3200 Reagan Drive, in Lafayette, Indiana, (Tippecanoe County, Lafayette Township). The hearing officer did not view the property.

Testimony regarding the exemption claim

7. Mid-Land is a not-for-profit corporation organized exclusively for charitable purposes with the mission to provide quality meals to the elderly and economically and/or physically disadvantaged individuals for a donation based on each individual's annual income. *Petitioner's Exhibit 4.*
8. Petitioner testified that, Mid-Land, originally called the Clinton Council on Aging, began a meal program for eight area counties and is governed by the Older Americans Act. *Brovont Testimony.* Currently about 1,000 meals a day are coming from an un-insulated pole barn with 3,000 square feet, while construction is in progress on the new facility. *Brovont Testimony.*

9. Petitioner testified that Mid-Land purchased the subject vacant parcels of land (totaling 3.246 acres) for the purpose of erecting a new central kitchen and food storage warehouse as furtherance of their nonprofit mission. *Brovont Testimony.*
10. Petitioner testified that construction of the proposed new kitchen and warehouse began in 2001 on both parcels of land as the result of 1.7 million dollars raised in grants and donations. *Brovont Testimony; Petitioner's Exhibit 8.*
11. Mid-Land's Form 990 Federal Tax Return indicates that 99.92% of their financial support is from public funding and all their proceeds go back into the subject charity. *Brovont Testimony; Petitioner's Exhibit 1.* Mid-Land's revenue is from Federal, State, and local government, Medicaid, Project Income, other nutrition meals fees, In-Kind, and public contributions. *Petitioner's Exhibit 2.*
12. Respondent testified that the County PTABOA denied the subject exemption claim because no representatives from Mid-Land were in attendance at the County Hearing. *McKee Testimony.*
13. The Petitioner contends that it received no notice of the County PTABOA hearing and was completely unaware of the scheduled County hearing. *Brovont Testimony.*
14. Testimony indicated that the PTABOA was not aware of Mid-Land's activities and whether they were eligible for exemption at the time of the County hearing. *McKee & Lahrman Testimony.* However, after the Petitioner presented evidence and testimony at the State hearing, the County did not voice any opposition to Mid-Land's exemption request.

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.

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 (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. 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. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State Board is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
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.
9. 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.

B. Constitutional and Statutory Basis for Exemption

10. 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.
11. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, Mid-Land 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.

12. 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.

C. Basis of Exemption and Burden

13. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
14. 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).
15. 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.

16. 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)).
17. 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).
18. As a condition precedent to being granted an exemption under the charitable or educational purpose clause of the statute, the taxpayer must demonstrate that it provides “a present benefit to the general public . . . sufficient to justify the loss of tax revenue.” *Name*, 671 N.E. 2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff’d* 571 N.E. 2d 1247 (Ind. 1991)).

D. Conclusions Regarding Charitable Purpose Claim

19. Mid-Land is a nonprofit group incorporated in the State of Indiana and exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Mid-Land is seeking exemption under Ind. Code § 6-1.1-10-16 claiming that the subject property is used for charitable purposes.
20. Indiana courts broadly construe the term “charitable” as the relief of human want and suffering in a manner different from the everyday purposes and activities of man in general. *Name*, 671 N.E. 2d at 221 (quoting *Indianapolis Elks Bldg. Corp.*

v. State Board of Tax Commissioners, 145 Ind. App. 522, 540, 251 N.E. 2d 673, 683 (Ind. App. 1969)).

21. “Charity” is not defined by statute, and the Tax Court looked to *Black’s Law Dictionary* to find the plain, ordinary, and usual meaning of “charity”; namely:

a gift for, or institution engaged in, public benevolent purposes. [It is a]n 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, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.

Raintree Friends, 667 N.E. 2d at 813-14 (quoting *Black’s Law Dictionary*, 213 (5th ed. 1979)).

22. Plainly, “charity” is not confined to relief for the destitute. It may be limited to one sex, church, city or confraternity. *City of Indianapolis v. The Grand Master, etc. of the Grand Lodge of Indiana*, 25 Ind. 518, 522-23 (1865).
23. It is equally clear that “charity” must confer benefit upon the public at large or relieve the government of some of an obligation that it would otherwise be required to fill. *Name*, 671 N.E. 2d at 221; *Foursquare Tabernacle*, 550 N.E. 2d at 854; *St. Mary’s Medical Center*, 534 N.E. 2d at 279. Relieving the government from an obligation that it would otherwise be required to fill can be seen as a benefit to the public at large.

24. Thus, to decide Mid-Land's charitable purpose claim, there is no question that there is a correlation between the offering of meals for a donation to the elderly and less fortunate and the general public benefit, so as to justify tax exemption.
25. Providing food for the indigent and the elderly are altruistic acts that fill a public need. The evidence indicates that Mid-Land advances a charitable purpose and donates a substantial portion of its services to the public while benefiting a substantial and indefinite class of persons who are the legitimate subject of charity. The undisputed evidence submitted by Mid-Land confirms that they operate entirely free from private profit motive, and are a "charitable organization."
26. Thus, to decide Mid-Land's exemption claim, the question arises as to whether the subject property, which was assessed as two vacant commercial lots on March 01, 2001 specifically falls within the statute under which the exemption is being claimed so as to justify tax exemption.
27. Ind. Code § 6-1.1-10-16 provides exemptions for buildings and land used for certain educational, literary, scientific, religious, or charitable purposes. Land is also exempt if a building that is being used for exempt purposes is situated on it. Ind. Code § 6-1.1-10-16 (b). Generally, exempt land is limited to fifteen acres.
Id.
28. Subject to the requirements set forth in Ind. Code § 6-1.1-10-16 (a), the property seeking exemption must be owned occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.
29. As a result of the property's vacant status on the March 1, 2001 assessment date, the crux of this appeal is whether the subject property meets the requirements set forth in Ind. Code § 6-1.1-10-16 (d) for exempt land. Although the subject property was assessed as two vacant parcels of land for 2001,

testimony affirms that the proposed new kitchen/warehouse improvement is currently under construction on the parcels, with plans to occupy the building in early spring of 2002.

30. Ind. Code § 6-1.1-10-16 (d) provides exemptions for a tract of land if 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).

31. Ind. Code § 6-1.1-10-16 (d)(2) states in pertinent part that a tract of land is exempt from taxation if:

(2) the tract does not exceed:

(A) one hundred fifty (150) acres in the case of:

(i) an educational institution; or

(ii) a tract that was exempt under this subsection on March 1, 1987; or

(B) two hundred (200) acres in the case of a local association formed for the purpose of promoting 4-H programs; or

(C) fifteen (15) acres in all other cases.

32. Further, Ind. Code § 6-1.1-10-16 (d)(3) states that the unimproved tract of land is exempt from property taxation if:

(3) not more than three (3) years after the property is purchased, and for each year after the three (3) year period, and the owner demonstrates substantial progress towards the erection of the intended building and use of the tract for exempt purposes. 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 a 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 that 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.

33. The record indicates that the subject property meets all the criteria listed above for claiming an exemption under Ind. Code § 6-1.1-10-16. The record is undisputed regarding evidence that the subject exempt organization has overseen and managed the construction of the proposed kitchen/warehouse building and that substantial progress has been made in erecting the facility. Indubitable testimony indicates that Mid-Land plans to occupy the subject property sometime around March 1, 2002, well within the constraints of the time limits listed above.

34. For all the reasons stated above, the State finds that Mid-Land is entitled to full charitable exemption pursuant to Ind. Code § 6-1.1-10-16.

The above state 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