

REPRESENTATIVE FOR PETITIONER:  
Sarah L. Masterson, President

REPRESENTATIVE FOR RESPONDENT:  
Jack C. Birch, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

MISSIONARIES OF DIVINE	)	Petition No.: 43-032-11-2-8-00002
COMPASSION, INC.	)	
	)	
Petitioner,	)	Parcel No.: 0671900590
	)	
v.	)	Kosciusko County
	)	Wayne Township
KOSCIUSKO COUNTY ASSESSOR,	)	
	)	Assessment Year: 2011
Respondent.	)	

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

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**September 23, 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.

**ISSUE**

1. Whether the Petitioner's real property is exempt from taxation for 2011 pursuant to Indiana Code § 6-1.1-10-16 because it was owned, occupied and used for religious purposes.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **PROCEDURAL HISTORY**

2. The subject property is a residential parcel located at 311 6<sup>th</sup> Street in Winona Lake that the Petitioner purchased late in 2006.
3. The Petitioner filed an Application for Property Tax Exemption (Form 136) claiming that its real and personal property should be 100% exempt for 2011 because of religious use. The statutory basis for the claim was Ind. Code § 6-1.1-10-16. According to the Form 136, the assessed value of the land is \$23,000. The assessed value of the improvements is \$172,700, and the assessed value of the personal property is \$140.
4. The Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) determined the subject property was 100% taxable for 2011. The PTABOA issued its determination on a Form 120 dated June 15, 2011.
5. The Petitioner filed a Petition for Review of Exemption (Form 132) on July 18, 2011, claiming the property should be entirely exempt based on its religious use and Ind. Code § 6-1.1-10-16.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

6. Administrative Law Judge Jaime S. Harris held the Board's hearing in Warsaw on June 25, 2013. There was no inspection of the property by either the ALJ or the Board.
7. President Sister Sarah L. Masterson was sworn as a witness for the Petitioner. County Assessor Laurie Renier was sworn as a witness for the Respondent.
8. The Petitioner presented the following exhibit:  
Exhibit A – Petitioner's Financial Records for 2008-2011.

9. The Respondent presented the following exhibits:
  - Exhibit 1 – Aerial photographs of subject property,
  - Exhibit 2 – Zoning map of Winona Lake,
  - Exhibit 3 – Masterson Chiropractic Advertisements,
  - Exhibit 4 – Letter from Winona Lake Deputy Clerk dated June 20, 2013.
10. The following additional items are recognized as part of the record:
  - Board Exhibit A – Notice of Hearing,
  - Board Exhibit B – Petition for Review (Form 132),
  - Board Exhibit C – Hearing Sign-In Sheet.

#### **SUMMARY OF PETITIONER’S CASE**

11. There has been some confusion about whether or not the women residing at the subject property are really nuns. This is because Ms. Masterson has a professional practice as a chiropractor in Warsaw. Her professional practice is kept separate from the activities of the Petitioner convent. According to Ms. Masterson, the convent could not exist without the chiropractic practice. *Masterson testimony.*
12. Franciscan Missionaries of Divine Compassion is a religious order of Anglican Communion that is typically thought of as the Episcopal Church but also the Province in Formation in the Anglican Communion in North America. Petitioner’s members basically live exactly as Roman Catholic nuns do except that they are Anglican. A convent is a residence of a religious order. *Masterson testimony.*
13. According to Ms. Masterson, the convent is a monastery. It is a residence with a chapel that offers the Divine Office and other prayer everyday as a community. This house, in particular, is a place of formation where persons discerning vocations to the religious life are trained and formed as nuns. Therefore, Ms. Masterson does a lot of training at the subject property. Church law severely limits the amount of ministry the nuns can undertake. It takes five and a half years to complete religious formation in the community, and during that time there is extensive withdrawal from the world for extra prayer and a serious academic formation. The other woman that lives at the property is named Shannon Choquet. She is primarily a student, so she is not involved in as much apostolic ministry as she will be later on in her life. She moved into the convent in

December 2012 and is from All Saints Anglican Church in Vermont. Ms. Masterson spends at least five hours a week in the direct academic training of Ms. Choquet. There is also a man who will be coming later this summer. Prior to Ms. Choquet, there was another woman named Julie Black. She never finished her application procedure. This is largely because she was determined to be fraudulent in her intentions. She was having mental health problems when she moved in, and Ms. Masterson does healing prayer work. Ms. Black falsely claimed that her family was beating her. Ms. Black resided at the subject property for less than six months. She did file an application to become a sister. She led Ms. Masterson to believe that she was headed in the right path to becoming a sister, but was not an acceptable candidate. *Masterson testimony.*

14. Ms. Masterson is involved in community intercession groups, prayer-walking the streets, and one on one inner healing prayer, which is a complementary practice to psychotherapy. She is also involved in local ministry to the homeless, mentally ill persons, and campus ministry. She provides ministry to students on four campuses, but only one of the groups meets at the convent. *Masterson testimony.*
15. On an “occasional basis,” Petitioner takes sick, mentally ill and needy people into the home and provides hospitality for persons from out of town who come for training or help. With the sick and mentally ill, it is occasionally necessary to observe and provide some care-giving as Ms. Masterson coordinates spiritual healing prayer, specialized medical care, psychological care and nutritional care. She tends to work with one or two mentally ill persons at a time, providing two hour inner healing sessions a few times a month. *Masterson testimony.*
16. The Petitioner’s primary source of income is Masterson Chiropractic Clinic. Ms. Masterson works full time four days a week at the clinic. But she is also very involved in other activities, such as Christian education. She is gone a week at the end of July, and in early August she helps out at the Saint Michael’s Camp. To the degree possible, Ms. Masterson is active with the local church. She has done children’s retreats. *Masterson testimony.*

17. The religious exemption is not based upon the organization being a community, but is based on it being an order. A religious order is defined in the Universal Code of Canon Law with reference to the Vatican and the Roman Catholic Church. What primarily separates a religious order from other secular families is a life of total dedication. These vows of poverty, chastity and obedience mean that every cent that the nuns can spare and every ounce of their energy is devoted to prayer and service. Religious orders have three components: the members live in the community, they are celibate, and they share all things in common. They also have a public witness. There are certainly people out there who have organized to live a contemplative life of prayer as a hermit, as just one person. *Masterson testimony.*
18. Petitioner is a 501(c)(3) organization because it is organized as a church and as a religious institution. The law is very clear that religious orders are exempt from taxation. *Masterson testimony.*
19. The Petitioner has maintained the subject property for approximately five years and nine months. Besides the two women mentioned previously, there are two friars who would periodically stay at the property. Father Gregory Mashburn and Brother Tom Rafter did not reside at the property, but would come for retreats and meetings. *Masterson testimony.*
20. The upstairs of the house contains two Sisters' bedrooms, a chapel, kitchen and living room. The lower level contains a library and additional bedrooms that are sometimes used by guests. The boat pictured in Respondent's photograph of the subject property belonged to a young man who came out of an abusive situation and was finishing high school. *Masterson testimony.*

#### **SUMMARY OF RESPONDENT'S CASE**

21. The subject property is simply a residence. The property's predominant use, therefore, is as a residence. While there is no dispute about Ms. Masterson's faith or her activities, the assessor does not believe that the use of this property qualifies it to receive a religious exemption under the statute, specifically Ind. Code § 6-1.1-10-16. While Respondent

could not find the definition of a convent in the Indiana Code, the closest definition would be that of a parsonage. And the evidence will establish that this property does not qualify for an exemption under the statute. *Birch argument; Renier testimony.*

22. The presumption is that all property in Indiana is subject to taxation. It is Petitioner's burden to establish that it is entitled to an exemption. This property is no different than any other residence where the occupants are very religious people. In reviewing the use of property for religious exemption purposes, one is required to look at the predominant use of the property. If it is a residence that is used specifically or predominantly for religious purposes, then that needs to be established. One way of doing so would be to file an affidavit pursuant to Ind. Code § 6-1.1-10-21 that establishes that the property is being used to house one of the church's or religious society's rabbis, priests, preachers, ministers, or pastors. The affidavit must also state that the property is not used to make a profit. Such an affidavit has not been submitted for the subject property. *Birch argument.*
  
23. The mere fact that someone from the religious order, individually, lives at the property does not establish that it is tax exempt church property. It would be no different than a person becoming ordained in some fashion automatically having their home become tax exempt. That is not accurate, appropriate or allowed under the law. There are many ministers that have full time jobs who also preach to people in the evenings and hold church services every weekend. Their homes are not parsonages, but instead are simply their residences. A parsonage is something that is separate and different and requires more proof to become tax exempt. To allow Ms. Masterson's residence to be tax exempt would open the flood gates to anyone making a similar request. The determination would become incredibly difficult. This case is no different than any other person who prays in his or her home. The subject property is not a convent. It is a residence with a kitchen, bathroom, living room, and garage. When you drive by the property, it appears like any other residence. If it were truly a convent, one would likely see a cross on a steeple located on the outside of the building or a sign that states it is a convent and the name of the convent. There are no statues of Saints or anything else that would distinguish the subject property from any other residential property. *Birch argument; Renier testimony.*

24. Respondent submitted photographs of the subject property that were taken in the fall of 2010. There is a boat in front of the garage door of the property. Ms. Masterson pays a sewer and trash pick-up fee in the same manner as a single family residence would do in Winona Lake. Respondent also submitted an advertisement pertaining to the Masterson Chiropractic Clinic. It refers to Ms. Masterson as Doctor Sarah Masterson and not Sister Sarah Masterson. The ad describes her biography and some historical facts about Doctor Masterson and activities for which she is involved. Ms. Masterson works full time as a chiropractor. *Birch argument; Resp. Ex. 's 1, 3 and 4.*
25. The subject property is zoned residential. Respondent presented two pages of maps that show the zoning classification for the area around the subject property. The maps show chapels, mosques, churches, and other religious organizations in the area in a lavender color. Petitioner's property is not the same color as these other religious properties. When driving by the property and looking at the photographs, there is no signage to identify it as a convent. Ms. Masterson claims that Petitioner is a 501(c)(3) organization, but has no letter determination from the IRS in that regard. Ms. Masterson has also submitted no affidavit or sworn statement to the assessor with respect to the use of the property. Under Ind. Code §6-1.1-10-21 regarding parsonages, a church or religious society must provide the county with an affidavit. *Birch argument; Resp. Ex. 1 and 2.*
26. Only two students besides Ms. Masterson have ever resided at the property. One of the women has only lived at the property for approximately six months and the other stayed there less than six months. Furthermore, Ms. Choquet did not live at the property during the assessment year at issue. While there have been other people who have stayed at the property for short amounts of time, this would be no different than anyone else that might help a troubled person from time to time in their own home. One person with two part-time residents over a period of five years does not constitute a community. There also is no congregation that attends the subject property for religious services. *Birch argument; Renier testimony.*
27. The PTABOA looked into this residence a couple years ago when there was an election in town. After members of the PTABOA walked door to door to inspect properties in the

area, the assessor received several phone calls about the subject property. Assessor Renier had not realized there were any issues with the property. It was previously tax exempt. When the exemption initially went through, the PTABOA rubber stamped a lot of exemptions for not-for-profit organizations under Ind. Code § 6-1.1-10-16 without fully investigating the properties. They never really made sure that the applicants provided the necessary documentation to prove that the exemption was justified. These are documents such as the articles of incorporation, bylaws, balance sheets, and affidavits. Ms. Renier then decided to do more research on the subject property and realized that Petitioner was missing documentation necessary to receive an exemption. *Birch argument; Renier testimony.*

28. While Ms. Masterson was never informed that she needed to file an affidavit with the assessor, the application for exemption explains in the instructions section exactly what is required. The assessor's office informs the taxpayer to make sure she reads the instructions. On the bottom of the application it notes that the taxpayer must present evidence that a property qualifies for exemption under a specific statute. Part of the application asks the taxpayer to indicate that the documentation has been provided. The application refers to the specific exemption statutes at issue in this case, Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-21. *Birch argument; Renier testimony.*
29. Respondent states he had three cases from the Board as well as the Indiana Supreme Court. The cases were cited in support of Respondent's position. Attorney Birch did not discuss the cases other than making a statement that they pertain to the issue of predominant use and determining whether the property is used for church purposes or not. The cases are Joshua Zen Temple, Inc. v. Hamilton County Assessor, Petition No.: 29-006-08-2-8-00001 (July 13, 2010), Rise Up and Walk Christian Ministries, Inc. v. Elkhart County Assessor, Petition No.: 20-027-11-2-8-00001 (April 15, 2013), and State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc. 765 N.E.2d 1257 (Ind. 2002). *Birch argument.*



## ANALYSIS

30. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, §1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
31. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property owner would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
32. The taxpayer seeking an exemption bears the burden of proving its property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).
33. Indiana Code § 6-1.1-10-16(a) states that “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, religious, or charitable purposes.” Further, “a tract of land ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(c).
34. The test used to determine whether all or a portion of a subject property qualifies for an exemption is the “predominant use” test. *New Castle Lodge #147, Loyal Order of*

*Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Indiana Code § 6-1.1-10-36.3(a) states that “property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.” Indiana Code § 6-1.1-10-36.3(c) further provides that “[p]roperty that is predominantly used or occupied for one (1) or more of the stated purposes by a church, religious society, or not-for-profit school is totally exempt under that section.”

35. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts. *See Indianapolis Osteopathic Hospital, Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).
36. Here Ms. Masterson argues that the subject property should be 100% exempt for the 2011 assessment year, because the property is a convent and used for religious purposes. She seeks the exemption under Ind. Code § 6-1.1-10-16. The Respondent, however, contends that the property is 100% taxable, because it is predominantly used as a residence and is merely owned by a very religious person.
37. Petitioner Missionaries of Divine Compassion, Inc. is a corporation that Ms. Masterson established on March 30, 2007. She is the President of the corporation as well as one of its three incorporators. No evidence was submitted regarding the other two incorporators. Ms. Masterson created the entity herself. Her involvement and probable control of the corporation is substantially different from a house provided and owned by a church for its pastors or nuns.
38. The Petitioner must prove the predominant use of the property was for religious purposes for the 2011 assessment year. Ms. Masterson did not present any exhibits to demonstrate the actual use of the property except for the financial records sent to the Board with the

petition. She testified that she is a nun and that the subject property is a convent of the Franciscan Missionaries of Divine Compassion. She stated that Petitioner is organized primarily to carry out a ministry of prayer. The property is zoned residential and is comprised of a lot and house located at 311 6<sup>th</sup> Street. The upstairs of the house contains two Sisters' bedrooms, a chapel, kitchen and living room. The lower level contains a library and additional bedrooms to house "occasional" guests and retreatants.

39. The only other Sister in the home, Shannon Choquet, moved into the property in December 2012. Because this was after the 2011 assessment year at issue in this case, her use of the property as a nun in formation and the amount of time Ms. Masterson spends training her is not probative for Petitioner's argument of predominant religious use. Ms. Masterson also testified that a man is going to reside at the house later this summer. Once again, his training by Ms. Masterson is not probative of religious use at the time of the assessment year at issue. The other woman, Julie Black, lived at the subject property prior to Ms. Choquet. Ms. Black was at the subject property for less than six months. Ms. Masterson gave no information concerning whether Ms. Black actually lived at the property during the 2011 assessment year. Therefore, it is difficult to give Ms. Masterson much, if any, credit for time spent training Ms. Black.
40. Ms. Masterson stated that she tends to work with one or two mentally ill persons at a time, providing two hour inner healing sessions a few times a month. She did not provide any evidence of when these sessions occurred or at what frequency. And two hour sessions a few times of month do not demonstrate a significant amount of time spent on religious activities.
41. Ms. Masterson testified that there have been a couple friars who would periodically stay at the property. Father Gregory Mashburn and Brother Tom Rafter did not reside at the property but would come for retreats and meetings. No further information was given as far as when these men actually visited the property or for how long. The Petitioner Corporation was formed in 2007. These men could have visited anywhere from 2007 to 2013. Therefore, it is unknown what amount of religious use can be attributed to the subject property in 2011 for any retreats or meetings these men may have attended.

42. Ms. Masterson works eight hours a day, four days a week as a chiropractor at Masterson Chiropractic Clinic. She testified that she keeps her chiropractic practice completely separate from her practice as a nun. Ms. Masterson earns income from her personal profession as a chiropractor at the clinic and then channels money into the Petitioner Corporation.
43. Petitioner had the burden to prove that the property was entitled to an exemption. There is no concrete evidence of anyone besides Ms. Masterson using the subject property for religious purposes during the 2011 assessment year. The only other person that could possibly have been residing at the property was Ms. Black, and Ms. Masterson testified that she was fraudulent in her intentions of becoming a nun. Ms. Masterson lives at the subject property while working at her outside business as a full time chiropractor. She eats, sleeps, and keeps her clothing at the property as any normal resident does in a typical home. Even though she testified about isolated pockets of religious activity at the subject property, the quantity of such activities was undefined by Ms. Masterson. She did not provide enough specific details to show that religious use occurs more than 50% of the time at this property. While it is clear the subject property is used as a residence and there is *some* religious use, the Petitioner failed to prove the predominant use is religious.
44. There is nothing in the Indiana Code that pertains specifically to a convent. The similarity between a convent and a parsonage, however, is strong enough to examine the property as a parsonage. Indiana Code § 6-1.1-10-21 states that a “a building that is used as a parsonage” and the “tract of land, not exceeding fifteen (15) acres, upon which a building that is used as a parsonage is situated” is exempt from property taxation if it is owned by, or held in trust for the use of, a church or religious society. Ind. Code § 6-1.1-10-21(b). Ms. Masterson testified that “the entity is organized as a church with a monastery being a subdivision of the whole church mentality.” No other evidence was given to prove this fact. The evidence Ms. Masterson offered, therefore, is insufficient to show that the subject property is owned or held in trust for use by a religious society as required under Ind. Code § 6-1.1-10-21(b).

45. To obtain an exemption for a parsonage, a church or religious society must also provide the county assessor with an affidavit signed under oath by the church's or religious society's head rabbi, priest, preacher, minister or pastor at the time it applies for the exemption. Ind. Code § 6-1.1-10-21(c). The affidavit must state the parsonage is being used to house the church's priest, preacher, ministers or pastors and that none of the parsonage is used to make a profit. *Id.* Petitioner did not submit such an affidavit to the assessor. The Petitioner failed to prove that the subject property satisfies the requirements for exemption under Ind. Code § 6-1.1-10-21(c).

### CONCLUSION

46. The Petitioner failed to establish a prima facie case that it is entitled to an exemption for the 2011 assessment year. The Board finds in favor of the Respondent and holds the Petitioner's property is 100% taxable.

### FINAL DETERMINATION

In accordance with these findings and conclusions the Petitioner's claim for exemption is denied.

ISSUED: September 23, 2013

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.