

REPRESENTATIVES FOR PETITIONER:

Beth Nichols, Office Manager  
Cynthia Garwood, Board President  
Suman Harshvardhem

REPRESENTATIVES FOR RESPONDENT:

Lawrence J. Larhman, PTABOA Member  
Lewis Beeler, PTABOA Member

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

MONTESSORI PARENTS, INC.,	)	*Petition Nos.: 79-025-01-2-8-00001
	)	79-025-01-2-8-00002 <sup>1</sup>
Petitioner	)	
	)	County: Tippecanoe
v.	)	
	)	Township: Wabash
TIPPECANOE COUNTY	)	
PROPERTY TAX ASSESSMENT	)	Parcel Nos.: 066-00202-3593
BOARD OF APPEALS,	)	166-04800-0107
	)	
Respondent	)	Assessment Year: 2001
	)	

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

**March 27, 2003**

**FINAL DETERMINATION**

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter

<sup>1</sup> The petitions have been re-numbered to accurately reflect the year of appeal.

referred to as the “Board”.

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

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

### **Issue**

1. The issue presented for consideration by the Board were:

*Whether the Petitioner adequately filed for exemption from property taxation.*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-11-7, Montessori Parents, Inc. filed a Form 132, Petition for Review of Exemption<sup>2</sup>, petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on May 13, 2002. The determination of the Tippecanoe Property Tax Assessment Board of Appeals (PTABOA) was issued on May 3, 2002.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on November 20, 2002 in Lafayette, Indiana before Joseph Stanford, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Beth Nichols  
Cynthia Garwood  
Suman Harshvardhem

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<sup>2</sup> The actual form filed by Montessori, a Form 131 Petition for Review of Assessment, is deemed to be a Form 132 due to the type of appeal.

For the Respondent:

Lawrence J. Larhman  
Lewis Beeler

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Beth Nichols  
Suman Harshvardhem

For the Respondent:

Lawrence J. Larhman  
Lewis Beeler

6. The following exhibits were presented:

For the Petitioner:

**Petitioner's Ex. 1** – Correspondence between Montessori Parents and its accountant.

**Petitioner's Ex. 2** – 2002 tax bills.

For the Respondent:

None submitted.

7. The following additional items are officially recognized as part of the record of proceedings:

**Board Ex. A** – Petition and attachments.

**Board Ex. B** – Hearing notice.

### **Jurisdictional Framework**

8. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

## State Review and Petitioner's Burden

9. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
10. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
11. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
12. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
13. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case.' See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State

that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

### **Constitutional and Statutory Basis for Exemption**

14. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.
15. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
16. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. 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**

17. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
18. 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).

19. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* (NAME), 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
20. 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)).
21. 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).
22. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), 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 (Ind. Tax 1991)).

### **Discussion of Issue**

#### *Whether the Petitioner adequately filed for exemption from property taxation*

23. The Petitioner asks that the Board use whatever authority possible to grant the exemption.

24. The Respondent contends that filing for the exemption was not timely and that there is no authority to grant the exemption.

25. The applicable rules governing this Issue are:

**Ind. Code § 6-1.1-11-3(a)**

The owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the county auditor of the county in which property is located. The application must be filed annually on or before May 15 on forms prescribed by the department of local government finance. The county auditor shall immediately forward a copy of the certified application to the county assessor. Except as provided in sections 1, 3.5, and 4 of this chapter, the application applies only for taxes imposed for the year for which the application is filed.

**Ind. Code § 6-1.1-11-3(c)**

An exemption application, which is required under this chapter shall contain the following information:

- (1) A description of the property claimed to be exempt in sufficient detail to afford identification.
- (2) A statement showing the ownership, possession, and use of the property.
- (3) The grounds for claiming the exemption.
- (4) The full name and address of the applicant.
- (5) Any additional information which the department of local government finance may require.

26. Evidence and testimony considered particularly relevant to this determination include the following:

- A. Montessori Parents is recognized as not-for-profit by the federal government under § 501(c)(3) of the Internal Revenue Service code.

- B. The parties agree that, had application for exemption been adequately performed, the subject property would qualify for property tax exemption. (Lahrman and Nichols testimony)
- C. Montessori Parents filed an exemption application on May 10, 2000, for personal property only located at 222 North Chauncy, West Lafayette. Montessori Parents leased the real estate at that location, so it did not apply for exemption from property taxes for real estate. (Nichols testimony)
- D. In September 2000, Montessori Parents purchased real estate at 2552 Soldiers Home Road, West Lafayette, and moved its operations, including all personal property, to that location. (Nichols testimony)
- E. The real property at 2552 Soldiers Home Road was previously owned by a church, and received property tax exemptions in the years it was owned by the church. (Lahrman testimony)
- F. At that time, Montessori Parents' accountant, Janet Becker, told Montessori Parents through e-mail correspondence that no further filing for property tax exemption was necessary, and that the exemption was "good until 2004." (Pet. Ex. 1 and Nichols testimony). Therefore, no exemption application was filed for the 2001 tax year.
- G. Montessori Parents, which had received a \$0 tax bill in 2001, received a tax bill for approximately \$18,000 in 2002. (Nichols testimony)
- H. The real estate and personal property owned by Montessori Parents at 2552 Soldiers Home Road, West Lafayette was determined to be 100% taxable by the PTABOA for the 2001 tax year. (Lahrman testimony)

#### Analysis of this Issue

27. Both parties agree that Montessori Parents qualifies for exemption from property taxes if all forms and applications are properly filed. The only issue to decide, then, is whether Montessori Parents adequately and timely filed for exemption.



28. The facts of this case are not in dispute. Montessori Parents filed an exemption application for its personal property when this property was located at the previous address, 222 North Chauncy. When the property was subsequently relocated to 2552 Soldiers Home Road, Montessori Parents did not re-file.
29. When Montessori Parents changed locations, its original exemption application no longer met the requirement of Ind. Code § 6-1.1-11-3(c)(4) requiring the entity to disclose the address of the property. A new exemption application should have been filed disclosing the correct address of Montessori Parents and its property. Exemption applications must be property location specific and filed by the current owner and occupier of the property.
30. Montessori parents did not, prior to the 2001 tax year, ever file application for exemption on the real property at 2552 Soldiers Home Road. Since Montessori Parents leased the real property at the previous location, and did not own it, Montessori Parents never filed an exemption application for *any* real property prior to 2001. Ind. Code § 6-1.1-11-3(a) requires the owner of property to file an application for exemption in order to obtain an exemption for property. Thus, even though the previous owner of the property received an exemption, the new owner is required to file to continue the exemption.
31. While Montessori Parents does not dispute these facts, it asks the Board to exercise whatever authority it may have to grant the exemption it seeks. Montessori Parents argues that it complied with the proper procedures for filing for the exemption to the best of its knowledge and ability, but received bad advice from its accountant, which caused this problem.
32. The Board is a creature of statute, and only has those powers granted by statute. *Matonovich v. State Board of Tax Commissioners*, 705 N.E. 2d 1093, 1096 (Ind. Tax 1999) citing *Vehslage v. Rose Acre Farms, Inc.*, 474 N.E. 2d 1029, 1033 (Ind. Ct. App. 1985)(“Administrative boards, agencies, and officers have no common law or inherent power, but only such authority as is conferred upon them by statutory enactment.”)

33. The Board is an administrative agency, and must decide cases based on the applicable law. The Board has no inherent power to ignore the law at its discretion. Therefore, as a matter of law, Montessori Parents' request for exemption for both personal property and real estate for the 2001 tax year must be denied for failure to adequately and timely apply for the exemption.

### **Summary of Final Determination**

34. For the reasons set forth above, Montessori Parents' request for property tax exemption on its real and personal property at 2552 Soldiers Home Road is denied. The property is 100% taxable.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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Chairman, Indiana Board of Tax Review

### **IMPORTANT NOTICE**

#### **- APPEAL RIGHTS -**

**You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.**