

REPRESENTATIVES FOR PETITIONER: Wendell Goad, Attorney  
Joe Krnich, CPA  
Tomislav Jeknic, President, Movement of Serbian  
Chetniks (MSC)  
Peter Dragojevic, Vice-President, MSC

REPRESENTATIVES FOR RESPONDENT: Betty Wilusz, Deputy Assessor, Lake County  
Sharon Fleming, Deputy Assessor, Lake County  
Hank Adams, St. John Township Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

MOVEMENT OF SERBIAN	)	Petition: 45-036-00-2-8-00002
CHETNIKS	)	Parcel: 20-13-0117-0022
	)	
Petitioner,	)	
	)	
v.	)	
	)	
LAKE COUNTY PROPERTY TAX	)	County: Lake
ASSESSMENT BOARD OF APPEALS	)	Township: St. John
	)	Assessment Year: 2000
Respondent	)	

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

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**September 14, 2004**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (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 was:

*Whether the real and personal property owned by Movement of Serbian Chetniks qualifies for 100% property tax exemption pursuant to Indiana Code §6-1.1-10-25 under the classification of miscellaneous organization.*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-11-7, Tomislav Jeknic, President, filed a Form 132, Petition for Review of Exemption, on behalf of Movement of Serbian Chetniks (MSC) petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on January 5, 2004. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued the Form 120 on December 5, 2003, determining that the real and personal property is 100% taxable.

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

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was conducted on June 23, 2004, in Crown Point, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3.

4. The following persons were present at the hearing and sworn in as witnesses:

For the Petitioner: Wendell Goad, Attorney  
Joe Krnich, CPA  
Tomislav Jeknic, President, Movement of Serbian  
Chetniks (MSC)  
Peter Dragojevic, Vice-President, MSC

For the Respondent: Betty Wilusz, Deputy Assessor, Lake County  
Sharon Fleming, Deputy Assessor, Lake County  
Hank Adams, St. John Township Assessor

5. The following exhibits were for the Petitioner:
  - Petitioner's Exhibit 1 – Booking calendar for 1999
  - Petitioner's Exhibit 2 – Booking calendar for 2000.
6. There were no exhibits presented at the hearing by the Respondent.
7. The following items are officially recognized as part of the record of proceedings:
  - Board Exhibit A – Form 132 petition and related attachments
  - Board Exhibit B – Notice of Hearing on Petition dated February 9, 2004.
8. The subject property is a memorial hall and club located at 6711 W. Lincoln Highway, Schererville.
9. The Administrative Law Judge did not conduct an onsite inspection of the property.

### **Jurisdictional Framework**

10. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### **Administrative Review And The Petitioner's Burden**

11. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

12. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
13. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

### **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. IND. CONST. Art. 10, § 1.
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) (non-profit status does not entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. of Tax Comm’rs v. Fort Wayne Sport Club*, 258 N.E. 2d 874, 881 (Ind. Ct. App. 1970); 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. See Ind. Code § 6-1.1-2-1.
18. 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 – 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. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* (NAME), 671 N.E. 2d 218 (Ind. Tax 1996).
19. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
20. 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 v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax 1987).

### **Analysis**

*Issue: Whether the real and personal property owned by Movement of Serbian Chetniks qualifies for 100% property tax exemption pursuant to Indiana Code §6-1.1-10-25 under the classification of miscellaneous organization.*

21. The Petitioner contends that the property qualifies for exemption as a chapter of the Veterans of Foreign Wars.
22. The Respondent contends the Petitioner did not provide any information or documentation to establish that the property qualified for exemption.
23. The Petitioner presented the following evidence and testimony:
  - a. MSC is an international veterans' organization. The membership consists of Serbian "Freedom Fighters" in World War II. *Goad testimony. Board Exhibit A.*
  - b. The subject property is a hall open to members Wednesday through Sunday. The hall is rented out for receptions and showers. Most of the rentals are to members or the families of members. The hall was rented thirty times each in 1998 and 1999; it was rented thirty-three times in 2000. *Goad testimony. Petitioner's Exhibits 1 & 2.*
  - c. When one considers only the number of days that the hall is rented, it is only rented about 8% or 9% of the time to non-members. *Goad testimony.*
  - d. The records for the hall activities and the club activities are separate. In 1998, the club portion, which is used for the members and their meetings, generated no income. The hall for the same year generated \$7,000. In 1999, the club made \$18,000 net profit and the hall, \$46,000. In 2000, the club generated \$5,000 and the hall \$19,000. *Goad testimony. Board Exhibit A.*
  - e. The money is donated to other clubs and the national group. MSC also gives donations to some of the local, charitable groups. It is not MSC's goal to make money, but to disperse the proceeds to benefit their cause. *Goad testimony.*
  - f. The reason no documentation was supplied was due to the fact that the treasurer/bookkeeper passed away. While MSC's new Board did the best they could, with most of the notices and requests for information going back and forth, the information never was put together and given to the County officials. The group has never paid real estate taxes before. *Goad testimony.*
24. The Respondent presented the following testimony:

- a. The Petitioner did not supply any documentation with the application for exemption nor did they indicate the basis for the claim for exemption. The PTABOA requested the documentation but there was no response to the request, so the application was denied. After they received the denial, MSC sent the requested information. *Fleming testimony*.
  - b. The organization is not a 501(c)(3) entity. *Fleming testimony*.
25. The Petitioner offered testimony that the organization is an international veterans' organization formed to foster and spread the ties of friendship between American and Serbian people and for patriotic, educational, civic and charitable purposes. The Petitioner claims exemption under Ind. Code 6-1.1-10-25(a)(7), which reads in relevant part: "(a) Subject to the limitations contained in subsection (b) of this section, tangible property is exempt from property taxation if it is owned by any of the following organizations:...(7) A chapter or post of the Veterans of Foreign Wars."
26. While the Movement of Serbian Chetniks may be an organization of veterans who fought in foreign wars, the Petitioner did not establish that it is a chapter or post of the Veterans of Foreign Wars (VFW).
27. The statute is quite specific as to which organizations may be exempt from taxation if the property is exclusively used and occupied for the purposes and objectives of the organization.
28. Accordingly, for all reasons set forth above, MSC has not met their burden showing they qualify for an exemption according to Ind. Code § 6-1.1-10-25(a)(7). MSC's land, improvements and personal property are determined to be 100% taxable.

### Summary of Final Determination

29. It is determined the property owned by MSC does not qualify for property tax exemption. Therefore the decision of the PTABOA that the real and personal property is 100% taxable is hereby sustained.

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

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Commissioner, 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.**