

REPRESENTATIVE FOR PETITIONER: John A. Morris, Governor, Moose Lodge #167

REPRESENTATIVE FOR RESPONDENT: Charles K. Todd, Jr., Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | |
|------------------------|---|------------------------------------|
| LOYAL ORDER OF MOOSE, |) | |
| RICHMOND LODGE, # 167, |) | |
| |) | Petition Nos.: 89-014-02-2-8-00009 |
| |) | 89-014-02-2-8-00009A |
| Petitioner, |) | 89-014-02-2-8-00009B |
| |) | |
| v. |) | County: Wayne |
| |) | Township: Wayne |
| |) | Assessment Year: 2002 |
| WAYNE COUNTY PROPERTY |) | |
| TAX ASSESSMENT BOARD |) | Parcel Nos.: 1291116700 |
| OF APPEALS, |) | 0299944600 |
| |) | 0299944400 |
| Respondent. |) | |

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

December 29, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) has reviewed the facts and the evidence in this matter. The Board now enters the following findings and conclusions on the issues that were presented.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUES

1. The issues presented for consideration by the Board were:
ISSUE 1 – Does the subject property qualify for a charitable use exemption under Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-36.3?
ISSUE 2 – Does the subject property qualify for exemption as a fraternal benefit association under Ind. Code § 6-1.1-10-23?

PROCEDURAL HISTORY

2. On the tax rolls, the Richmond Moose Lodge #167 is listed as three real estate parcels. The lodge filed for exemption on all three parcels. The Wayne County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the property is 100 percent taxable on September 8, 2003. (Board Exhibit A.)
3. Pursuant to Ind. Code § 6-1.1-11-7, the administrator of the lodge filed a separate Form 132 for each of those parcels, petitioning the Board for an administrative review. Those forms were filed on October 6, 2003. (Board Exhibit A.)

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on May 26, 2004, in Richmond, Indiana, before Brian McKinney, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2.
5. The following persons were present at the hearing:
For the Petitioner: John A. Morris, Governor of Moose Lodge #167
For the Respondent: Michael P. Statzer, Wayne County Assessor
Marie Elstro, Member, Wayne County PTABOA
Joseph L. Kaiser, President of Wayne County PTABOA

6. The only person listed above who was not sworn as a witness is Charles K. Todd, Jr.
7. Neither party presented any documentary evidence at this hearing.
8. The following items are officially recognized as part of the record of proceedings for each petition:
 - Board Exhibit A – Form 132 petition
 - Board Exhibit B – Notice of Hearing on petition.
9. The lodge is located at 111 South 8th Street, Richmond, Indiana. (Board Exhibit A) It includes a parking lot, the social quarters, and the old section. (Morris testimony.) The social quarters provides food and has a bar and pool tables. (Morris testimony.) The old section is used for bingo and dances. (Morris testimony.) The “bingo hall ... is basically for raising money for non-profits.” (Morris testimony.)

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. Washington 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 Dep't of Revenue*, 667 N.E.2d 810 (Ind. Tax Ct. 1996) (non-profit 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. 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 Ass’n of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).

19. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. Therefore, worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 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. *Indianapolis Osteopathic Hospital, Inc. v. Dep’t of Local Gov’t Fin.*, No. 49T10-0012-TA-127, slip op. at 7 (Ind. Tax Ct. Dec. 9, 2004); *Monarch Steel Co., Inc. v. State Bd. of Tax Comm’rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass’n of Seventh Day Adventists v. State Bd. of Tax Comm’rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

21. 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.” *Miniature Enthusiasts*, 671 N.E.2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Bd. of Tax*

Comm'rs, 534 N.E.2d 277, 279 (Ind. Tax Ct. 1989), *aff'd* 571 N.E.2d (Ind. Tax 1991)).
Accord Indianapolis Osteopathic Hospital, slip op. at 8.

ANALYSIS

ISSUE 1: Does the Richmond Moose Lodge qualify for a charitable use exemption under Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-36.3?

22. The lodge contends the subject property qualifies for an exemption for charitable use because certain exempt activities conducted on the subject property are necessary to carry out the charitable purpose of the organization.
23. The Respondent contends the subject property is not exclusively used for charitable purposes. Therefore, it does not qualify for a 100 percent exemption under Ind. Code § 6-1.1-10-16 (charitable). The Respondent further contends that the subject property is not used for a charitable purpose more than 50 percent of the time. Therefore, it does not qualify for any exemption under Ind. Code § 6-1.1-10-36.3.
24. The applicable statutes governing Issue 1 are:

Ind. Code § 6-1.1-10-16. Buildings and land used for educational, literary, scientific, religious or charitable purposes

(a) 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.

Ind. Code § 6-1.1-10-36.3. Property used or occupied for one or more stated purposes; applicability of exemption; limitations

(a) For purposes of this section, 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.

(b) If a section of this chapter states one (1) or more purposes for which property must be used or occupied in order to qualify for an exemption, then the exemption applies as follows:

(1) Property that is exclusively used or occupied for one (1) or more of the stated purposes is totally exempt under that section.

(2) Property 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.

(3) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.

(4) Property that is predominantly used or occupied for a purpose other than one (1) of the stated purposes is not exempt from any part of the property tax.

(c) Property is not used or occupied for one (1) or more of the stated purposes during the time that a predominant part of the property is used or occupied in connection with a trade or business that is not substantially related to the exercise or performance of one or more of the stated purposes.

27. The subject property qualifies for an exemption for charitable purposes only if it is owned, occupied, and used for charitable purposes. The issue to be considered is whether the building qualifies for an exemption, not whether the members are charitable. “Although charitable giving might serve as evidence to support claimed charitable use of the facility, the statutory test since 1983 has been predominant use of the facility, not distribution of income for charitable purposes.” *State Bd. of Tax Comm’rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1263 (Ind. 2002)
28. In the present case, the property in question consists of the lodge building and parking lot. The lodge provides a place where members can eat, drink and play pool. (Morris testimony.) It also is used for bingo and dances. (Morris testimony.) The evidence offered by the Petitioner did not establish what the charitable nature of use might be, if any. The Petitioner offered only conclusory statements, such as testimony that the bingo hall is basically for raising money for not-for-profits, to support the claim of charitable use. That evidence is not probative or sufficient to establish that there is any charitable use. *Whitley Prods. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119-20 (Ind. Tax Ct. 1998). Furthermore, that evidence demonstrates an erroneous conclusion by Petitioner that fundraising for not-for-profits is necessarily charitable activity. *Raintree*

Friends, 667 N.E.2d at 813 (charitable purpose must be proven for tax exempt status.)
See Lincoln Hills Dev. Corp. v. State Bd. of Tax Comm'rs, 521 N.E.2d 1360, 1361 (Ind. Tax Ct. 1988).

29. The building clearly is used at least partly for social purposes. (Morris testimony.)
Because the sole use of the building is not charitable, the building does not qualify for a 100% exemption.
30. The subject property might qualify for a partial exemption if it were used more than 50% of the time for charitable purposes. In that case, the subject would qualify for an exemption in the amount that is charitable use. If the subject is used for charitable purposes 50% of the time or less, however, then there is no exemption for it.
31. The Petitioner did not present any evidence with a breakdown of the actual usage of the building. To get even a partial exemption, the Petitioner must submit probative evidence establishing that the building is used more than 50% of the time for a charitable purpose. The failure to present any evidence about the amount of time or space that might be used for charitable purposes is fatal to even a partial exemption.
32. The lodge did not prove that it is entitled to any charitable exemption.

ISSUE 2: Does the Richmond Moose Lodge qualify for exemption under
Ind. Code § 6-1.1-10-23 as a fraternal benefit association?

33. The lodge contends that the subject property qualifies for exemption as a fraternal benefit society.
34. The Respondent contends that the subject does not qualify for an exemption as a fraternal benefit society.

35. The applicable statute governing this issue is:

Ind. Code § 6-1.1-10-23. Fraternal benefit associations

(a) Subject to the limitations contained in subsection (b) of this section, tangible property is exempt from property taxation if it is owned by a fraternal beneficiary association which is incorporated, organized, or licensed under the laws of this state.

(b) The exemption does not apply to real property unless it is actually occupied and exclusively used by the association in carrying out the purpose for which it was incorporated, organized, or licensed.

36. In the Indiana Code, Title 27, article 11 governs fraternal benefit societies. According to Ind. Code § 27-11-1-1: “This article applies to any incorporated society, order, or supreme lodge without capital stock, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not-for-profit, operated on a lodge system with ritualistic form of work, having a representative form of government, *and that provides benefits in accordance with this article.*” (Emphasis added).

37. Ind. Code § 27-11-2-3 states that: “A society shall operate for the benefit of members and their beneficiaries by: (1) Providing benefits as specified in IC 27-11-6-1; and (2) Operating for one (1) or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes for the benefit of its members that may also be extended to others. These purposes may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.”

38. Ind. Code § 27-11-6-1 lists benefits that can be provided as: death benefits; endowment benefits; annuity benefits; temporary or permanent disability benefits; hospital; medical or nursing benefits; monument or tombstone benefits to the memory of deceased members; and such other benefits as authorized for life insurers and that are not inconsistent with this chapter. Title 27 Article 11 seems to apply to organizations that provided contractual benefits similar to insurers. (Title 27 contains the statutes governing insurance).

39. The Petitioner did not present any evidence indicating the subject property is providing benefits required to meet the definition of fraternal benefit association. That lack of

evidence is fatal to this part of Petitioner's claim. Accordingly, the decision of the PTABOA to deny the exemption stands.

SUMMARY OF FINAL DETERMINATION

Determination of ISSUE 1: Does the subject property qualify for a charitable use exemption?

40. The Petitioner did not present probative evidence indicating the subject property qualifies for a charitable exemption under the predominant use test. Consequently, there is no change as a result of this issue.

Determination of ISSUE 2: Does the subject property qualify for exemption as a fraternal benefit association?

25. The Petitioner did not present probative evidence that the Moose Lodge is a fraternal benefit association under Ind. Code § 6-1.1-10-23 or Ind. Code § 27-11. Consequently, there is no change as a result of this issue.

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

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.