

REPRESENTATIVE FOR PETITIONER:
Hugo C. Songer, Attorney

REPRESENTATIVE FOR RESPONDENT:
Kristi Carroll, Posey County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

VFW POST 6576,)	Petition No.: 65-005-08-2-8-00001
)	
Petitioner,)	Parcel Nos.: 003-01294-00
)	003-01295-00
)	
v.)	Posey County
)	Center Township
POSEY COUNTY ASSESSOR,)	
)	Assessment Year: 2008
Respondent.)	

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

December 21, 2009

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

Occasionally the Petitioner, VFW Post 6576, rents a portion of its building to get supplemental income, which helps the Petitioner to provide services for veterans and the community. At the county level it was determined that the building is 50% exempt and 50% taxable because of the rentals. Do the rentals preclude a 100% exemption based on Ind. Code § 6-1.1-10-25(a)(7)?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The subject property is the land, improvements and personal property of VFW Post 6576 located in Wadesville.
2. Quartermaster James M. Crowder filed an Application for Property Tax Exemption (Form 136) for real and personal property for the Veterans of Foreign Wars Post 6576 on May 12, 2008.
3. The Posey County Property Tax Assessment Board of Appeals (PTABOA) determined the real property is 50% taxable and 50% exempt. It also found the personal property is 100% exempt—a determination the Petitioner does not dispute. The PTABOA issued its decision on a Form 120 dated August 1, 2008.
4. Post Commander Charles E. Huck filed a Petition for Review of Exemption (Form 132) on September 8, 2008, claiming the real property should be entirely exempt based on either Ind. Code § 6-1.1-10-16 (charitable use) or Ind. Code § 6-1.1-10-25(a)(7) because it is exclusively used as a VFW post.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Administrative Law Judge Rick Barter held the Board's hearing in Mount Vernon on August 5, 2009. He did not inspect the property.
6. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner – William A. Thien,
Charles E. Huck,
James M. Crowder,
 - For the Respondent – County Assessor Kristi Carroll,
Debra Eads.

7. The parties submitted the following exhibits:
- a. Petitioner Exhibit 1 – Notice to file for exemption,
Petitioner Exhibit 2 – Form 136 exemption application,
Petitioner Exhibit 3 – Aerial photograph of subject property,
Petitioner Exhibit 4 – Notice of PTABOA hearing,
Petitioner Exhibit 5 – Notice of PTABOA action,
Petitioner Exhibit 6 – Form 132 Petition,
Petitioner Exhibit 7 – Notice of Hearing,
Petitioner Exhibit 8 – Articles of Incorporation for VFW Post 6576,
Petitioner Exhibit 9 – Email to county assessors dated January 23, 2007,
Petitioner Exhibit 10 – Minutes of PTABOA meeting dated July 15, 2008,
Petitioner Exhibit 11 – Previous exemption filings and determinations for
Petitioner,
Petitioner Exhibit 12 – Petitioner’s federal and state income tax returns for
2006/2007,
Petitioner Exhibit 13 – Exemption statutes including Ind. Code § 6-1.1.10-25,
Petitioner Exhibit 14 – Trustee’s Report of Audit, VFW Post 6576, quarters from
2007 to 2009,
Petitioner Exhibit 15 – List of medical equipment available for loan,
Petitioner Exhibit 16 – Community Service Reports,
Petitioner Exhibit 17 – Letters of thanks and appreciation to VFW Post 6576,
Petitioner Exhibit 18 – Photographs from Memorial Day observances,
Petitioner Exhibit 19 – Article concerning leasing by not-for-profits,
Petitioner Exhibit 20 – Copies of Indiana Board determinations granting
exemptions for American Legion Post 86 and American
Legion Post 500,
Petitioner Exhibit 21 – Part of an exemption determination regarding Fraternal
Order of Eagles #3988,
Petitioner Exhibit 22 – Sketch of Post 6576 interior,
Petitioner Exhibit 23 – List of events held between January 2008 and June 2009,
 - b. Respondent Exhibits – None.
8. The following additional items are recognized as part of the record of the proceedings:
- Board Exhibit A – Form 132 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Conduct of Exemption Hearing Order,
Board Exhibit D – Hearing sign-in sheet.

SUMMARY OF PETITIONER'S CASE

9. The property should be 100% exempt under Indiana Code § 6-1.1-10-25(a)(7): “tangible property is exempt from property taxation if it is owned by ... a chapter or post of the Veterans of Foreign Wars....”
10. The Petitioner is a not-for-profit corporation. The Petitioner’s use of the property and its activities are consistent with the Articles of Incorporation on file with the Indiana Secretary of State. *Petitioner Exhibit 8.*
11. National and state VFW organizations, like the locals, are required to perform public service on behalf of veterans. On a national level, the 2.2 million VFW members honor the dead by helping the living. The VFW provides \$2.5 million in scholarships to veterans and their families. It helps raise the level of medical care available to veterans—especially female veterans. The VFW has supplied telephone long distance cards to hospitalized veterans and organized welcome-home observances across the country. Indiana’s VFW Posts donated more than one million dollars and thousands of volunteer hours in 2008 to and on behalf of military veterans, their families and communities. *Thien testimony.*
12. VFW Post 6576 routinely meets the requirements of the purposes of the organization. It occasionally rents a portion of the facility in order to supplement its income and thereby fulfill those obligations. *Songer argument.* Between January 1, 2008, and June 30, 2009, seven of forty-five events held at Post 6576 were rentals. The average rental collected by the Petitioner for those seven events was \$300. *Petitioner Exhibit 23.*
13. Unlike other similar organizations, Post 6576 only opens its doors for scheduled meetings and events. It does not maintain a bar operation other than during scheduled events. It does not operate a bingo game or hold a gambling license. It is forced to hold fundraisers such as dances three to five times a year to raise the approximately \$12,000 required to keep the organization viable. *Songer argument.*

14. The federal and state tax returns show the Petitioner's total rental income was \$2,200 in 2006 and in 2007 it was \$1,250. *Petitioner Exhibit 12*. Quarterly financial records entered into evidence for the past two years reflect a loss of about \$4,500. *Petitioner Exhibit 14*.
15. As a part of its public service the Petitioner allows various not-for-profit and charitable organizations to use the subject property for meetings without charge. Several thank-you notes and other acknowledgments from groups such as the Posey County Commissioners, the USO of Indiana, the American Red Cross chapter, the Wadesville Fire Department, political parties, the county Farm Bureau, Indiana Conservation Officers, nursing homes and various public school organizations reflect this type of use. *Crowder testimony; Huck testimony; Petitioner Exhibit 17*.
16. The Petitioner lends medical-related equipment such as crutches, wheelchairs and beds at no charge. *Crowder testimony; Petitioner Exhibit 15*. In addition, the Petitioner provides military color guards and buglers for military salutes at veterans' funerals and holidays such as Memorial Day or Veterans Day. *Crowder testimony; Petitioner Exhibits 16-18*. Without the income it receives from all of its fundraising efforts—including the rentals—the Petitioner would not be able to fulfill its obligations for service to the community. *Crowder testimony*.
17. Post 6576 got its charter from the national VFW on March 22, 1951. Until 2008 the subject property had been granted a 100% exemption for every year since 1951. The operations have been about the same during that whole time. *Crowder testimony; Petitioner Exhibit 11*.

SUMMARY OF RESPONDENT'S CASE

18. The county does not dispute or seek to minimize the contributions of Post 6576 to the community. The occasional rental of the property, however, makes the property not “exclusively used” for purposes of the VFW as required by Ind. Code § 6-1.1-10-25(b). *Eads argument*.

19. The county determined the subject property is 50% taxable because when the property is leased to a third party it “mitigates” the exemption. The 50% taxable and 50% exempt split is an estimate. The Respondent has no documentation to support it. *Eads testimony*.
20. Allowing only 50% exempt was based on lack of exclusive use by the VFW. The county imposed the 50% taxable ruling on every such club in the county where the use was not exclusively for an exempt purpose. *Carroll testimony*.

ANALYSIS

21. Tax exemption statutes are strictly construed against the person claiming the exemption. *Trinity Episcopal Church v. State Bd. of Tax Comm’rs*, 694 N.E.2d 816, 818 (Ind. Tax Ct. 1998); *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm’rs*, 686 N.E.2d 954, 956 (Ind. Tax Ct. 1997). Nevertheless, exemption provisions are not to be construed so narrowly that the legislature’s purpose is defeated or frustrated. *See id.*
22. “The taxpayer bears the burden of proof in showing that it is entitled to the exemption it seeks.” *Indianapolis Osteopathic Hospital, Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).
23. Exemptions are decided based on the actual use of a property. Not-for-profit status does not establish any inherent right to be tax exempt. *See Knox Co. Prop. Tax Assessment Bd. of Appeals v. Grandview Care*, 826 N.E.2d 177, 182-183 (Ind. Tax Ct. 2005); *Lincoln Hills Dev. Corp. v. State Bd. of Tax Comm’rs*, 521 N.E.2d 1360, 1361 (Ind. Tax Ct. 1998); *Raintree Friends Housing, Inc. v. Indiana Dep’t of Rev.*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct. 1996).
24. Indiana Code § 6-1.1-10-25 states in relevant part that tangible property is exempt from property taxation if it is owned by a post of the Veterans of Foreign Wars. *See Ind. Code § 6-1.1-10-25 (a)(7)*. The exemption does not apply “unless the property is exclusively used, and in the case of real property actually occupied, for the purposes and objectives of the organization.” Ind. Code § 6-1.1-10-25 (b). In other words, here the Petitioner’s

exemption claim depends on whether occasionally renting the post and then using the proceeds to support VFW programs for veterans and the community can be considered as being within the “exclusively used” for “the purposes and objectives of the organization” requirement.¹ This statute does not require the property to be exclusively used and actually occupied *by* the members of the VFW.

25. Undisputed testimony established that the purpose of the VFW is to provide service to veterans, their families and the community, state and nation. It also established that the proceeds from the occasional rentals further the VFW’s purpose by providing essential funds for programs it would not otherwise be able to afford.
26. In the past the Board allowed this exemption for an American Legion golf course under similar circumstances—the American Legion is another one of the organizations specifically listed in Ind. Code § 6-1.1-10-25. In *American Legion Post #6 v. Howard Co. PTABOA* the Board found that a golf course owned and operated by the American Legion was exempt because the proceeds from it furthered the purposes of the organization, thereby meeting the requirement of “exclusively” used and occupied in Ind. Code § 6-1.1-10-25 (b). And in *American Legion Post #500 v. Marion Co. PTABOA* the Board found that American Legion’s property 100% exempt in spite of the fact that the Form 136 Petition had erroneously sought less than a 100% exemption, on the basis that the post fully meets the requirements of Ind. Code § 6-1.1-10-25.
27. The Respondent did not dispute any of the facts that the Petitioner presented, but simply argued for a different conclusion based on the occasional rentals showing that use of the subject property was not *exclusively* by the VFW. The rental events at Post 6576 were minimal in number (seven times during eighteen months) and for an average of only \$300 per event. The Respondent’s position appears to be applying the same rough estimate to everybody (50% taxable and 50% exempt for all such clubs), even if there had been only one such event. Where the occasional rentals clearly help to accomplish the general

¹ Because the more specific exemption provision in Ind. Code § 6-1.1-10-25 for a VFW is determinative for this case, it is unnecessary to make any determination regarding the Petitioner’s alternative claim that the property qualifies for 100% charitable use exemption under Ind. Code § 6-1.1-10-16. Accordingly, this determination is not based on whether the subject property is predominantly or entirely used for charitable purposes.

purposes and objectives of the VFW, such an interpretation of the word “exclusively” is overly restrictive and would frustrate the legislative purpose behind the specific exemptions for the organizations listed in Ind. Code § 6-1.1-10-25. It cannot be sustained.

28. The Respondent presented no probative evidence to demonstrate the Petitioner is not using and occupying the real property for the purposes and objectives of the VFW or is acting contrary to its charter or bylaws. The Respondent failed to prove any legitimate reason that the subject property does not qualify for 100% exemption.
29. Therefore, the Board finds in favor of the Petitioner.

FINAL DETERMINATION

In accordance with these findings and conclusions the Petitioner’s real property is 100% exempt.

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.