

REPRESENTATIVE FOR PETITIONER:
Jerry Nieten, Founder

REPRESENTATIVE FOR RESPONDENT:
Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

RESTORATION INSTITUTE LTD.)	Petition No.: 29-022-11-2-8-00001
)	
Petitioner,)	Parcel No.: 1207270000006005
)	
v.)	Hamilton County
)	
HAMILTON COUNTY ASSESSOR,)	Wayne Township
)	
Respondent.)	Assessment Year: 2011

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

April 7, 2015

FINAL DETERMINATION

The Indiana Board of Tax Review (the “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 real property owned by Restoration Institute (the “Petitioner”) 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 12558 East 191st Street in Noblesville.
3. The Petitioner filed an Application for Property Tax Exemption on Form 136 claiming that the subject property should be 100% exempt 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 \$63,100 and the assessed value of the improvements is \$300,300.
4. The Hamilton County Property Tax Assessment Board of Appeals (the “PTABOA”) determined the subject property was 100% taxable for 2011. The PTABOA issued its determination on Form 120 dated August 29, 2011.
5. The Petitioner filed a Petition for Review of Exemption on Form 132 on September 22, 2011, claiming the property should be entirely exempt based on its religious use under Ind. Code § 6-1.1-10-16.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. The Board’s appointed administrative law judge, John J. Thompson (the “ALJ”), held the Board’s hearing in Noblesville on December 9, 2014.¹ There was no inspection of the property by either the ALJ or the Board.

¹ At the Board hearing, the Petitioner disagreed that the year at issue was 2011. The Petitioner filed its Form 136 with the PTABOA indicating 2010 was the year at issue. The Petitioner indicated on its Form 132 that 2011 was the year at issue. The instructions with regard to Form 136 indicate the filing deadline is May 15 of the year at issue. Because the Petitioner did not timely file its Form 136 for 2010 purposes, and because the Petitioner indicated on its Form 132 that it was appealing the 2011 exemption, the Board considers 2011 to be the year at issue at the Board hearing.

7. Dr. Jerry Nieten and Sheila Nieten were sworn as witnesses for the Petitioner. Attorney Marilyn Meighen represented the Respondent.
8. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Petitioner Complaint and Petitioner Request,
 - Petitioner Exhibit 2 – Violations of the Law,
 - Petitioner Exhibit 3 – Facts in Evidence,
 - Petitioner Exhibit 4 – Shock and Awe Salvation Series,
 - Petitioner Exhibit 5 – Additional Facts in Evidence of Christian Ministry,
 - Petitioner Exhibit 6 – Facts of Law.
9. The Respondent did not present any evidence.
10. The following additional items are recognized as part of the record:
 - Board Exhibit A – Petition for Review (Form 132) and attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign-In Sheet.

SUMMARY OF PETITIONER’S CASE

11. Dr. Nieten is a founder and president of Restoration Institute. Mrs. Nieten is a founder and vice-president of Restoration Institute. Dr. Nieten has primary control of Restoration Institute. *Nieten testimony.*
12. The Petitioner presented an operational chart that lays out the operational function of Restoration Institute, the Berean Christian Fellowship,² and different “branches and arms and activities.” Included in that organizational chart is Restoration Institute of Advanced Dental Care as well as the home church. *Pet’r Ex.3, Nieten testimony.*
13. Dr. Nieten has not attended seminary and is not affiliated with any mainstream church organization. *Nieten testimony.*
14. The subject property is Dr. and Mrs. Nietens’ principal place of residence. At one time there was a homestead standard deduction on the subject property, but Dr. Nieten cannot

² Dr. Nieten implied in his testimony that the Berean Christian Fellowship is a “home church.”

recall when.³ The Petitioner contends that there is currently no mortgage on the property and no mortgage deduction is being claimed. Restoration Institute has not been recognized as tax-exempt by the Internal Revenue Service. *Nieten testimony.*

15. Dr. and Mrs. Nieten eat, sleep, keep their clothes in, and engage in other activities at the property that are common to other people in their homes. The Petitioner does not concede, however, that the subject property is a “house.” *Nieten testimony.*
16. The property is not open to the general public. There is no church sign on the property. The Petitioner is not listed as a church in the phone book. The Petitioner does not advertise to the general public in any manner. There is no formal membership. *Nieten testimony.*
17. Among other things, the Petitioner claims to provide dental services at the subject property limited to Christian home educators and their families and friends. Such services are commonplace to the dental industry. There are three rooms in the subject property where the dental services are performed. *Nieten testimony.*
18. The Petitioner also provides a “Bible based” healthcare plan to participants who agree with various biblical principles and guidelines. The Petitioner believes that individuals do not need third party insurance. *Pet’r Ex. 5, Nieten testimony.*
19. There is an outbuilding on the subject property. The Petitioner contends that they conduct seminars there and “if people need a place to stay for a time they stay there.” However, there is no documentation showing who stayed or how many times anyone stayed there. *Nieten testimony.*
20. The mission statement of Restoration Institute has three branches: Advanced Biblical Studies, American Heritage, and Advanced Health Care. The purposes are to:
 - restore the spirit, soul and body of individuals,
 - teach people how to rightly divide the word of truth,
 - teach people how to properly apply God’s word to their lives,

³ Dr. Nieten further testified that both the homestead standard deduction and mortgage deduction were “messed up,” that he had to “go in to get things straightened out” and that they were “put back on.” He concedes he does not know when any of this occurred.

- restore Godly education to the parents and the home,
- restore God in our nation,
- restore the Bible in our nation,
- restore Godly principles and character throughout our nation,
- restore the founding principles of our nation,
- restore health care according to biblical principles.

The ministry will be accomplished through websites, email, study clubs, seminars, conferences, and presentations in private and public outreach settings using various resources including printed materials, audio-video recordings, electronic transmissions and other effective methods. *Pet'r Ex. 3, Nieten testimony.*

21. The Petitioner contends that, since the beginning of 2010, it is no longer in the “business” of dental care, but rather the “ministry” of dental care. Dental fees paid by patients are “cost fees.” All money goes to operations for Restoration Institute. No personal income is realized. The practice is dedicated to Jesus Christ and based upon Christian principles. *Nieten testimony.*

22. Restoration Institute is incorporated in the state of Indiana and corresponding articles of incorporation have been filed. Warranty deeds indicate ownership of the subject property by Restoration Institute, and the first property assessment was placed on the property as of March 1, 2010. *Pet'r Ex. 3, Nieten testimony.*

23. The Petitioner offers a course entitled the “Shock and Awe Salvation Series” on the property. The Petitioner does “not keep track of” how many times a year it offers the course. *Pet'r Ex. 4, Nieten testimony.*

24. In 2010 and 2011, “study clubs” consisting of four to ten participants were conducted at the subject property. The Petitioner does not know how many such clubs were conducted per year. *Nieten testimony.*

25. Seminars, conferences and presentations were held at public settings such as the Hamilton County Fairgrounds. The Petitioner does not know how many such events were held at public settings in 2010 or 2011. *Nieten testimony.*

26. In brief summary, the Petitioner, in *Pet'r Ex.3*, asks for the following from the Board:

- 100% property tax exemption for Restoration Institute,
- immediate reimbursement of all property tax payments made after March 10, 2010,
- a copy of the minutes of the PTABOA hearing,
- removal of the PTABOA members that denied the exemption,⁴
- the Respondent be required to notify all property tax petitioners of information with regard to their cases, and
- a written statement indicating Restoration Institute “is entitled to full (100%) property tax exemption of all holdings (land, buildings and personal property) anywhere in the State of Indiana at any time.”

27. The Petitioner contends that this case is about freedom of religion and property rights. The Petitioner contends that Restoration Institute is a non-profit Christian organization and, pursuant to Ind. Code 6-1.1-10-16, all or part of a building is exempt from property taxation if it is owned, occupied and used by a person, which includes a corporation, for religious purposes and that a tract of land on which such building is situated is also exempt. The Petitioner contends that a Christian ministry is operated on the property “100% of the time, 100% of the property.” *Pet’r Ex. 6, Nieten testimony.*
28. Furthermore, the Petitioner generally cites to the preamble of the Indiana Constitution and various sections of Article I of the Indiana Constitution, specifically, sections 1, 2, 3, 4, 7, and 12. The Petitioner also recited the First Amendment and the Fourteenth Amendment to the Constitution of the United States. *Pet’r Ex. 6, Nieten testimony.*

SUMMARY OF RESPONDENT’S CASE

29. The Respondent contends that the subject property is the principal place of residence of the Nietens. The property is located on approximately 10 acres of land and consists of a house and a small out-building. The Respondent claims the exemption application was properly denied and the Board should affirm the denial. *Meighen argument.*
30. Regarding burden, pursuant to *Hamilton Co. PTABOA v. Oaken Bucket Partners*, 938 N.E.2d 654, 656 (Ind. 2010) and *Boehm v. Town of St. John*, 675 N.E.2d 318, 325 (Ind. 1996), and Ind. Code 6-1.1-2-1, property ownership affords significant benefits to the owner of the property and with those benefits comes the responsibility of paying property

⁴ Dr. Nieten ultimately conceded that the Board did not “have the power to” remove the PTABOA members.

taxes. In Indiana, property taxation is the rule and exemption is the exception. *Meighen argument.*

31. Pursuant to *Dept. of Local Govt. Finance v. Roller Skating Rink Operators Association*, 853 N.E.2d 1262 (Ind. 2006), property taxes fund government and exemptions release certain properties from the obligation to pay taxes. When a property is exempt, such exemption shifts the burden onto other taxpayers in the same taxing unit. *Meighen argument.*
32. Pursuant to *Four Square Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850 (Ind. Tax Ct 1990), exemptions are strictly construed. Consequently, the Petitioner must unequivocally demonstrate that the subject property is owned, occupied, and predominantly used for a religious purpose. Additionally, the Petitioner must show that there is a public benefit sufficient enough to warrant such exemption. It is the position of the Respondent that such burden cannot be met by the Petitioner. *Meighen argument.*
33. It is beyond the Board's jurisdiction to make decisions on interest or late fees. *Meighen argument.*
34. While Dr. and Mrs. Nieten have religious beliefs, and many of the documents in evidence have religious connotations, property tax exemptions contemplate the character of the purpose of the property, not the character or the purpose of the owners of the property. *Meighen argument.*
35. The subject property is used as a home. While there may be religious activity occurring there, the predominant use is a home. Because the Nietens sleep there, eat there, and keep their clothes there, the subject property is a house and that is its predominant use. While there may be pockets of isolated religious activity, far more is necessary to find a predominant religious use. *Meighen argument.*
36. In 2013, the Board issued *Missionaries of Divine Compassion v. Kosciuscko Co. Assessor* (Pet. No. 43-032-11-2-8-00002). In that case, a nun founded a 501(c) organization. The

nun lived in the house and claimed it was a monastery. The nun was also a chiropractor and claimed a religious exemption. There were several people who periodically lived in the house and she claimed to perform certain religious services there. The Board rejected the claim for exemption because the overall primary purpose of the property in that case was that of a house, regardless of 501(c) status and regardless of the organizational paperwork. *Meighen argument.*

37. With regard to constitutional claims, one must do far more than provide a copy of the constitution, highlight a few paragraphs, and claim denial of state or federal constitutional rights. Procedural due process is essentially a fair opportunity to be heard. Dr. Nieten has had that opportunity. Procedural due process has been satisfied. Indiana's property tax does not discriminate in any way with regard to religious beliefs or ideas. It is a tax on property and does not violate substantive due process. *Meighen argument.*
38. Ultimately, the Respondent contends that the record in this case is insufficient to support exemption, and no constitutional rights were infringed.

ANALYSIS

39. 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.
40. 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).

41. 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).
42. 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).
43. 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.”
44. “The evaluation of whether property is owned, occupied, and predominantly 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).

45. The Petitioner must prove the predominant use of the property was for religious purposes for the 2011 assessment year. The property is zoned residential and is comprised of a lot, a house, and an outbuilding. The house contains the Nietens' living quarters and space equipped for a dental practice. The subject property was occasionally used for a "dental ministry" and various religious courses and presentations. Dr. Nieten neither testified, nor provided any documentation, as to when or how frequently those events occurred.
46. Dr. Nieten stated that, with regard to the out-building, "if people need a place to stay for a time they stay there." He did not provide any evidence about who the "people" might be, when such situations occurred, or at what frequency.
47. The Petitioner had the burden to prove that the property is entitled to an exemption. There is little probative evidence of significant use of the subject property for religious purposes. The Nietens live at the subject property. They eat, sleep, and keep their clothing at the property as any normal residents would do in a typical home. Even though Dr. Nieten testified about isolated pockets of religious activity at the subject property, neither the frequency nor volume of such activity was shown. The Petitioner did not provide sufficient specific details to show that religious use occurred for more than 50% of the time at the subject property for the year at issue. While it is clear the subject property is used as a residence and there might be some religious use, the Petitioner failed to prove the predominant use is religious.
48. With regard to the constitutional issues raised by the Petitioner, administrative agencies do not have the power to declare a statute unconstitutional. IND. CONST. ART. III, § 1; *see also State v. Sproles*, 672 N.E.2d 1353, 1360 (Ind. 1996), *Johns v. Robinson*, 415 U.S. 351, 368 (1974). Consequently, the Board declines to address such constitutional issues.
49. With regard to the Petitioner's other requests as enumerated in Paragraph 26 *supra*, the provision of the minutes of the PTABOA hearing, if such hearing occurred, is a matter between the Petitioner and the PTABOA. The removal of PTABOA members is outside

of the authority of the Board, which the Petitioner conceded on the record. Finally, with regard to a written statement indicating Restoration Institute is entitled to a 100% property tax exemption of all holdings “anywhere in the State of Indiana at any time,” the Petitioner is reminded that, as discussed above, each exemption case stands on its own facts and such statement would exceed the Board’s authority.

CONCLUSION

50. 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: April 7, 2015

Commissioner, 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 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>>.