

REPRESENTATIVES FOR PETITIONER: Carolyn S. Bryant, Director of Richmond Day Nursery and Linda R. Stanley, President of the Board of Directors of Richmond Day Nursery.

REPRESENTATIVES FOR RESPONDENT: Charles K. Todd, Jr., Attorney for Wayne County Property Tax Assessment Board of Appeals and Michael P. Statzer, Wayne County Assessor.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

RICHMOND DAY NURSERY	)	Petition No.: 89-014-02-2-8-00003
ASSOCIATION, INC.,	)	
	)	County: Wayne
Petitioner	)	
	)	Township: Wayne
v.	)	
	)	Parcel No.: 0294291900 & Personal Property
WAYNE COUNTY PROPERTY	)	
TAX ASSESSMENT BOARD OF	)	
APPEALS,	)	
	)	Assessment Year: 2002
Respondent	)	
	)	

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

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**March 10, 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 qualifies for exemption under IC § 6-1.1-10-16 for educational or charitable purposes.*

### Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-3 Linda R. Stanley, on behalf of Richmond Day Nursery Association, Inc., (Richmond Day Nursery) filed a Form 136 application for property tax exemption with the Wayne County Property Tax Assessment Board of Appeals (PTABOA) on May 10, 2002. The County PTABOA denied the application on September 9, 2003 and gave Richmond Day Nursery proper notice of denial.
3. Pursuant to Ind. Code § 6-1.1-11-7, Richmond Day Nursery filed a Form 132 petition seeking a review of the PTABOA determination by the Board. The Form 132 was filed on September 22, 2003.

### Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on December 18, 2003 in Richmond Indiana before Patti Kindler, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
5. The following persons were present at the hearing:  
For the Petitioner: Carolyn S. Bryant, President of Board of Directors,  
Richmond Day Nursery; and  
Linda R. Stanley, Director, Richmond Day Nursery

For the Respondent: Charles K. Todd, Jr., Attorney for the Wayne County  
PTABOA; and  
Michael P. Statzer, Wayne County Assessor

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

For the Petitioner: Carolyn S. Bryant  
Linda R. Stanley

For the Respondent: Michael P. Statzer

7. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – Articles of Incorporation, Bylaws, and income and  
expense statements for Richmond Day Nursery.

Petitioner's Exhibit 2 – Copy of the subject property record card.

8. Richmond Day Nursery is the sole party in the appeal to participate in the discovery provisions listed in Ind. Code § 6-1.1-15-4. Prior to the Board's hearing, Richmond Day Nursery submitted several documents including: a cover letter naming the witnesses and summary of testimony; copies of the subject Form 132; letter of contention; a copy of the 2003 curriculum schedule; various daily schedules for ages two through age twelve; and, two (2) letters from parents of children who attended Richmond Day Nursery.

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

Board's Exhibit A – Form 132

Board's Exhibit B – Notice of Hearing on Petition

10. The property under appeal is assessed as a commercial general office structure located at 300 North 10<sup>th</sup> Street, Richmond, Wayne Township and Wayne County. The assessed value of record is: Land: \$25,500; Improvements: \$135,600; and, Personal property: \$21,040.

11. The Administrative Law Judge did not conduct an onsite inspection of the subject property.

### **State Review and Petitioner's Burden**

12. 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).
13. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. 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 890 (Ind. Tax 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
14. 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.]
15. 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.]
16. 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' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. 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**

17. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
18. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, exemption is claimed under Ind. Code § 6-1.1-10-16, which provides that all or part of a building is exempt from property taxes if it is owned, occupied, and used for educational, literary, scientific, religious or charitable purposes.
19. 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**

20. In Indiana, the general rule is that all property is subject to property taxation. Ind. Code § 6-1.1-2-1.
21. 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).

22. 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 (NAME) v. State Board of Tax Commissioners*, 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.
23. 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)).
24. 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).
25. On the subject Form 132, Richmond Day Nursery claimed exemption for educational purposes pursuant to Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-36.3.
26. As a condition precedent to being granted an exemption under the educational purpose clause of the statute (Ind. Code § 6-1.1-10-16), the taxpayer must demonstrate for the record 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

ISSUE: *Whether the real and personal property qualifies for exemption under IC § 6-1.1-10-16 for educational or charitable purpose*

27. The Petitioner contends Richmond Day Nursery qualifies for exemption pursuant to IC § 6-1.1-10-16 for charitable educational purposes. Further, the Petitioner claims Richmond Day Nursery uses its facility more than fifty percent (50%) of the time for educational purposes in accordance with IC § 6-1.1-10-36.3.
28. The Respondent contends the Petitioner did not provide sufficient information or documentation at the PTABOA's hearing to meet their burden of proof that they should qualify for an educational or charitable exemption under IC § 6-1.1-10-16.
29. The applicable law governing this Issue is:

**IC § 6-1.1-10-16(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.

**IC § 6-1.1-10-16(c)**

A tract of land, including the campus or athletic grounds of an educational institution, is exempt from property taxation if a building which is exempt under subsection (a) or (b) is situated on it and the tract does not exceed fifty (50) acres in the case of an educational institution or a tract that was exempt on March 1, 1987 or fifteen (15) acres in all other cases.

**IC § 6-1.1-10-16(e)**

Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.

**IC § 6-1.1-10-36.3**

Property is predominately used or occupied for one of the stated purposes if it is used or occupied for one or more of those purposes during more than 50% of the time that it is used or occupied in the year that ends on the assessment date of the property.

***Raintree Friends v. State Board of Tax Commissioners, 667 N.E. 2d at 813-14 (Ind. Tax 1996)***

Charity defined in part as “an attempt in good faith to advance and benefit mankind in general...without regard to their ability to supply that need from other sources and without hope or expectation...of gain or profit.”

***National Association of Miniature Enthusiasts v. State Board of Tax Commissioners (NAME), 671 N.E. 2d at 221 (Ind. Tax 1996)***

To qualify for an educational purpose exemption, it must be proven that at least some substantial part of the educational training provided would otherwise have to be furnished by our tax-supported schools. It must benefit the public at large by relieving the government of some of an obligation that it would otherwise be required to fill.

***Trinity School of Natural Health, Inc. v. Kosciusko County Property Tax Assessment Board of Appeals, 799 N.E. 2d 1234 (Ind. Tax 2003)***

A taxpayer need only relieve the State's burden to some limited extent with programs and courses merely related to those found in tax-supported schools.

30. Evidence and testimony considered particularly relevant to this determination include the following:
- (a) The Richmond Day Nursery building was constructed in 1919 and established as a nonprofit organization for charitable and educational purposes as a childcare facility. *Stanley Testimony; Petitioner's Exhibit 1.*
  - (b) Unlike typical childcare centers, the Richmond Day Nursery provides scheduled educational training with an established curriculum, themes, lessons, and daily plans. *Stanley and Bryant Testimony; Board Exhibit A; Form 132, page 2.*
  - (c) Some of Richmond Day Nursery's fulltime staff includes: two teachers with education degrees and two teachers who currently hold Associate degrees. *Stanley Testimony.* All instructors are required to stay current with twelve training hours each year in childhood brain development. *Id.*
  - (d) The nursery is used more than fifty percent (50%) of the time to instruct and teach its students in accordance with Ind. Code § 6-1.1-10-36.3. *Stanley Testimony; Board's Exhibit A; Form 132, page 2.* Educational learning is facilitated in a classroom setting similar to the public education environment. *Id.*
  - (e) The nursery is funded by tuition from students and also public donations. *Stanley Testimony.* Some of the children from lower income families attend the daycare on the government voucher program. *Bryant Testimony.*
  - (f) The daycare profits go back into the Richmond Day Nursery Corporation to defray expenses. *Stanley Testimony.* The fee income from the nursery is



insufficient to pay the corporation's debt without the help of public donations.  
*Board's Exhibit A; Form 136, page 2.*

- (g) The Richmond Day Nursery building is used exclusively and entirely for the charitable purpose of educational childcare and no other activities take place inside the facility other than the daycare activities. *Stanley Testimony.*
- (h) Richmond Day Nursery estimates that approximately five to six hours each school day are devoted to age-related education for its children. *Bryant Testimony.*
- (i) The nursery provides a particular service similar to the Head Start government program for lower income children, but the latter does not provide fulltime day care for children or accept children of all ages or those from higher income families. *Stanley Testimony.*
- (j) The PTABOA's decision to deny the exemption was proper because the taxpayer did not provide sufficient information to meet their burden at the PTABOA hearing. *Todd Testimony.*

### **Analysis of the Issue**

- 31. The Petitioner asserts the subject property should be exempt for charitable and educational purposes because it is used more than fifty percent (50%) of the time for instructing and teaching its students.
- 32. To qualify for an educational purpose exemption, the Petitioner must show that it "provides at least some substantial part of the educational training which would otherwise be furnished by our tax supported schools." *NAME*, 671 N.E. 2d at 221 (quoting *Fort Wayne Sport Club*, 147 Ind. App. at 140, 258 N.E. 2d at 882).
- 33. "An educational exemption is available to taxpayers who provide instruction and training equivalent to that provided by tax supported institutions of higher learning and public schools because to the extent such offerings are utilized, the state is relieved of its financial obligation to furnish such instruction." *NAME*, 671 N.E. 2d at 222 (quoting *Fort Wayne Sport Club*, 147 Ind. App. at 140, 258 N.E. 2d at 881-82).

34. The educational activity must confer a public benefit. Obviously, the closer the activity is to the type of educational activity traditionally occurring in public schools, the more obvious is the public benefit. *Professional Photographers of American, Inc., v. State Board of Tax Commissioners*, 148 Ind. App. at 601, 268 N.E. 2d 617 (1971); *Ft. Wayne Sport Club*, 147 Ind. App. at 129, 258 N.E. 2d 874 (1970).
35. Accordingly, to qualify for an educational exemption, Richmond Day Nursery is required to affirmatively show that its activities fit into the general scheme of education provided by the State and supported by public taxation. The educational exemption is available if the organization demonstrates the predominant use of the property is educational and that the Petitioner makes a contribution to the relief of the burden of government.
36. The Petitioner offered testimony and documentation that Richmond Day Nursery is predominantly used for educational purposes and thereby, does relieve the State of some of its educational burden. In the current situation, the Petitioner offers full time nursery care to children of all incomes with daily scheduled educationally based activities. The Petitioner contends Richmond Day Nursery offers a program, similar to, and in lieu of, typical preschool education. Further, the Petitioner demonstrated that their educational activities and curriculum confer a benefit to the general public, (e.g., families, children, public schools, community) similar to the government based Head Start program, but with the added bonus of onsite training in conjunction with the child's full time day care.
37. Public benefits that accrue from a property's use represent a recognized method of determining whether a property's predominant use is educational. "Taxpayers who predominantly use their property to provide instruction and training equivalent to that provided by tax-supported institutions of higher learning and public schools will qualify for the educational exemption because they provide a benefit to the public by relieving the state of its obligation to provide such instruction." See *NAME*, 671 N.E. 2d at 222. *Trinity School of Natural Health, Inc v. Kosciusko County Property Tax Assessment Board of Appeals*, 799 N. E. 2d, 1234(Ind. Tax 2003).

38. In this case, the Petitioner has demonstrated that Richmond Day Nursery relieves the State of some of its burden by providing courses found or related to courses found in tax-supported institutions and public schools. The Respondent did not rebut the Petitioner's evidence that they provide an educational benefit to the general public, or that the use of the facility was anything but charitable.
39. Accordingly, for the reasons set forth above, Richmond Day Nursery has met their burden showing they qualify for an exemption according to IC § 6-1.1-10-16. Richmond Day Nursery's land, improvements and personal property are determined to be 100% exempt.

### **Summary of Final Determination**

*Whether the real and personal property qualifies for exemption under IC § 6-1.1-10-16 for educational or charitable purposes*

40. Richmond Day Nursery met their burden in this appeal. Richmond Day Nursery's real and personal property hereby, qualify for 100% exemption.

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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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.**