

ISSUE

Does the Petitioner qualify for the religious purpose exemption under Ind. Code § 6-1.1-10-16 with respect to the real property that is the subject of this appeal?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Petitioner is a nonprofit corporation and Catholic religious order seeking religious exemptions on four residential properties in South Bend. The addresses are 725-727 Forest Avenue, 701 Marquette Avenue, 1023 Portage Avenue, and 52700 Shellbark Avenue.

2. The Petitioner filed Form 136 applications for exemptions for the 2012, 2013, and 2014 tax years. The St. Joseph County Property Tax Assessment Board of Appeals denied the exemption applications, finding the properties 100% taxable and issuing Form 120 notices for each year. The Petitioner filed Form 132 petitions for review with the Board.

Hearing Facts and Other Matters of Record

3. The Board conducts an impartial review of appeals concerning assessed valuations, deductions, and exemptions for tangible property. Ind. Code § 6-1.5-4-1(a). Such appeals are conducted under Ind. Code § 6-1.1-15.

4. Commissioner Jonathan Elrod was designated by the Board as the administrative law judge (ALJ) in this matter. The hearing was conducted in South Bend on August 18, 2015. He did not conduct on-site inspections of the properties.

5. Suzanne Brennan, CSC, General Treasurer, was sworn as a witness and testified for the Petitioner. Rosemary Mandrici, St. Joseph County Assessor, and Sue Tranberg, appeals manager, were sworn as witnesses for the Respondent.¹
6. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Summary of uses of the properties²
7. The Respondent presented the following exhibits:³
 - Respondent Exhibit A – Form 132 Petition
 - Respondent Exhibit B – Form 120 Notice of Action on Exemption Application
 - Respondent Exhibit C – Form 136 Application for Exemption
 - Respondent Exhibit D – Property Record Card and photograph of property
8. The following additional items are part of the record:
 - Board Exhibit A – Form 132 petitions and exhibits
 - Board Exhibit B – Notices of Hearing
 - Board Exhibit C – Hearing sign-in sheet

Summary of the Petitioner’s Case

9. The Petitioner argues the subject properties are owned, occupied and used for religious purposes and are exempt from property taxation under Ind. Code § 6-1.1-10-16. The Petitioner did not present evidence regarding the history or purposes of the Sisters of the Holy Cross, Inc., but the Forms 136 establish that the Sisters of the Holy Cross is an order of the Roman Catholic Church and under the local supervision of the Diocese of Fort Wayne and South Bend. The Petitioner noted that the history of the Sisters of the Holy Cross in this area dates back over 175 years. The Sisters of the Holy Cross live in community and take vows of poverty, chastity, and obedience and dedicate their lives to

¹ Only Ms. Mandrici testified.

² Respondent made an objection to this exhibit, which Petitioner characterized as an affidavit, on the ground that it was not signed by the head of the order. The ALJ overruled the objection and admitted the exhibit, but held that it was not an affidavit because it did not contain a verification under oath.

³ The Respondent submitted Exhibits A-D for each of the properties. Each of Exhibits A-C was for the 2014 tax year. Also included with Exhibits A-D for each tax year was a 2014 cover letter from the Petitioner, the Respondent’s witness list, an exhibit coversheet, and a copy of the notice of hearing for each tax year.

community and service to the poor. The members, in addition to being nuns, often have careers in teaching, nursing, nonprofits, and the order's administration. The members do not own property. *Brennan testimony.*

10. The offices of the Sisters of the Holy Cross are on property on or near the campus of St. Mary's College, in Notre Dame, Indiana. The Petitioner owns four buildings that are more similar to traditional "convents." The buildings are aging and may in the future be slated for demolition due to the costs of upkeep. The Petitioner has no plans to build a traditional convent to replace them. The Petitioner notes that convents are no longer routinely built alongside Catholic churches and schools. *Brennan testimony.*

11. The subject properties are residences without outward signs reflecting they are used as convents for the Sisters of the Holy Cross. The interiors do have religious décor, and some have an area used as a chapel for the eucharist. The properties all have 2-3 residents and they are exclusively members of the order. The Petitioner attached profit and loss statements for each of the properties for 2011-2014 to the 2014 Forms 132. The statements reflect that the needs of the members of the order residing at the properties are communally paid from the order's common fund. All of the residents are 72 years of age or older. Most are retired from vocational activities but remain active members of the order in religious and community activities. The members engage in daily prayer and theological reflection. The properties are not cloistered, and non-members are admitted for prayer, theological discussion, and other gatherings for religious or community service purposes. At least some of the residences are in areas where poor-relief is needed and the members can better serve the poor. The residency of the nuns at each property was common knowledge in the neighborhood. *Brennan testimony; Petitioner Ex. 1.*

Summary of the Respondent's Case

12. The Respondent argues that a convent is different from a home. A convent is a commercial structure suited to a convent and the subject properties are constructed as dwellings in a residential setting. The Respondent argued it was unclear whether the use is private to the sisters or for the public. The Respondent notes that an affidavit as to the

use of those homes was not included with the applications. Each property is really a home, not a religious convent. The public would not be aware of its religious character. *Mandrici testimony*.

Analysis

13. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *See Indianapolis Osteopathic Hosp. v. Dep't. of Local Gov't. Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (*citing* I.C. § 6-1.1-2-1). A taxpayer bears the burden of proving that its property qualifies for exemption. *Id.* All or part of a building that is owned, occupied, and predominantly used for educational, literary, scientific, religious, or charitable purposes is exempt from taxation. *See* I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3. That exemption extends to the land on which the building is situated and to personal property contained therein. I.C. § 6-1.1-10-16(c); (e).
14. “The taxpayer must present probative evidence during the Indiana Board hearing which demonstrates that its property is owned for exempt purposes, occupied for exempt purposes, and predominately used for exempt purposes.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13, 14 (Ind. Tax Ct. 2009). “An exemption is strictly construed against the taxpayer and in favor of the State.” *Indianapolis Osteopathic Hosp.*, 818 N.E.2d at 1014. “The evaluation of whether property is owned, occupied, and predominately used for a charitable purpose is a fact sensitive inquiry; there are no bright-line tests because every exemption case stands on its own facts.” *Hamilton County Assessor v. SPD Realty, LLC.*, 9 N.E.3d 773, 777 (Ind. Tax Ct. 2014). Thus, each and every exemption case “stand[s] on its own facts and, ultimately, how the parties present those facts.” *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004).
15. For each assessment year, the exemption is based on the use of the property during “the year that ends on the assessment date of the property.” I.C. § 6-1.1-11-3(c)(5). A

taxpayer “must demonstrate that its property was owned, occupied, and predominately used for [an exempt] purpose during the relevant tax year (i.e., ‘the year that ends on the assessment date of the property’).” *Bros. of Holy Cross, Inc. v. St. Joseph County Prop. Tax Assessment Board of Appeals*, 878 N.E.2d 548, 550 (Ind. Tax Ct. 2007).

Furthermore, the Petitioner must prove that the building is predominately used for exempt purposes more than 50% of the time. *New Castle Lodge #147 v. State Bd. of Tax Comm'rs*, 733 N.E.2d 36, 39 (Ind. Tax Ct. 2000), *affirmed by State Bd. of Tax Comm'rs v. New Castle Lodge # 147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257 (Ind. 2002).

16. The exemption statute also has a more specific provision relating to property used as a parsonage:

The following tangible property is exempt from property taxation if it is owned by, or held in trust for the use of, a church or religious society:

- (1) A building that is used as a parsonage.
- (2) The tract of land, not exceeding fifteen (15) acres, upon which a building that is used as a parsonage is situated.

I.C. § 6-1.1-10-21(b). Pursuant to this section, the primary residence of the religious leader of a congregation, namely a parsonage or rectory, is expressly contemplated in the exemption statutes:

The traditional application of such exemptions has been to relieve from the burden of taxation a benefice of land or housing appropriated to a settled pastor of a church having a local congregation.

Indiana Assoc. of Seventh-Day Adventists v. State Bd. of Tax Commissioners, 512 N.E.2d 936, 939 (Ind Tax Ct. 1987). Accordingly, the Indiana Tax Court has held that:

[T]o qualify as a minister and thus come within the provision IC 6-1.1-10-21, the minimum which must be shown is that individuals residing in the parsonage perform the pastoral duties of an ordained minister.

Id. The Petitioner has failed to present evidence that the residents of the property perform pastoral duties for a particular congregation. As such, an exemption

cannot be granted under this provision. However, this does not end the inquiry as an exemption may still be granted under the general exemption statute.⁴

17. The interpretation of exemption statutes “should not be so narrow and literal as to defeat its settled purpose, which in this instance is that of encouraging, fostering and protecting religious and educational institutions.” *State Bd. of Tax Comm'rs v. Wright*, 215 N.E.2d 57, 62 (Ind. Ct. App. 1966). In accordance, Indiana has noted that residential use of a property does not necessarily exclude a religious use:

Courts in other jurisdictions which have statutory "exclusive use" requirements for religious purposes have held personal living quarters to be exempt from taxation especially if incidental and necessary for the effective welfare of the exempt religious institution. Thus in *Silver Bay Ass'n for Christian Conferences & Training v. Braisted* (1920), 80 N. Y. S. 2d 548, 15 A. L. R. 2d 1064, 1067, 1068, it was held that employees' only available living quarters at a summer religious camp were tax exempt. In another related case, that of *Syracuse Center of Jehovah's Witnesses v. City of Syracuse* (1937), 163 Misc. 535, 297 N. Y. S. 587, 15 A. L. R. 2d 1064, 1067, 1068, the holding was that property, owned by a religious institution, a part of which was used to shelter workmen and students, was totally exempt from taxation as being property held exclusively for religious purposes.

In Illinois, exemption has been extended to frame houses on seminary ground, used for sleeping quarters for clergy, nuns, students, relatives, as well as visitors. *People v. Rev. Saletyni Missionaries* (1951), 409 Ill. 370, 99 N. E. 2d 186, 15 A. L. R. 2d Supp. 379, 380.

Priests' residential quarters at a retreat were held to be within the scope of tax exemption accorded to property used exclusively for religious purposes in the case of *Serra Retreat v. Los Angeles County* (1950), 35 Cal. 2d 755, 221 P. 2d 59, 15 A. L. R. 2d 1064, 1068.

Id. at 62. *Wright* considered whether primitive cabins owned by pastors and laymen but erected on land owned by a Methodist conference were exempt when the cabins were only occupied during a two-week-long annual conference. *Id.* at 58-59. The court held that the “only purpose and the only use for the cabins was shown to be religious.” *Id.* at 63.

⁴ *Id.* (holding that the portion of a duplex not qualifying as a parsonage but used as a residency by other ministers and teachers might still be exempt if used exclusively for religious purposes).

18. Indiana appellate courts have not defined a convent for property tax purposes. In the context of zoning cases, Indiana has referred to a convent and a residence of nuns synonymously:

We are of the opinion that a convent or 'sisters' home' must be considered an integral part of any Roman Catholic church project, which is composed of four component parts, viz.: church, priests' mansion, a 'sisters' home,' and school.

Board of Zoning Appeals et al. v. Schulte, 172 N.E.2d 39, 42 (Ind. 1961). “The ‘convent’ or ‘sisters' home’ is the house where the sisters, or nuns, live; they live a community life, eat their meals in common at a common table; they sleep there; they have no other home. . . .” *Board of Zoning Appeals v. Wheaton*, 76 N.E.2d 597, 600 (Ind. Ct. App. 1948).

The defining characteristic is its use as a dwelling:

A nun may be briefly designated as a woman of the Catholic religion who lives in a convent under vows of poverty, chastity, and obedience. A convent is a house or building occupied by nuns. We are of the opinion that such a building may fairly be termed a residence or dwelling. It is a dwelling place for nuns.

Id. at 601 (quoting *Scott Co. v. Roman Catholic Archbishop, Diocese of Oregon*, 163 P. 88 (1917)). Thus, the residence for nuns is considered as much a religious purpose as the church and parochial school.

19. Other jurisdictions are split on whether non-traditional convents should be considered exempt. Alaska denied an exemption to a Catholic church for a residence for visiting nuns because a *convent* has “only one residence[:] the motherhouse, convent or monastery where the order is based,” and not “all residences of all members of a religious order who dwell together” are exempt. *Nome v. Catholic Bishop*, 707 P.2d 870, 886 (Alaska 1985). In contrast, Maryland has found that communal residential facilities for rotating officiants at a Mormon Temple are sufficient to be considered analogous to a convent. *Green v. Church of Jesus Christ of Latter-Day Saints*, 59 A.3d 1001, 1014 (Md.

Ct. App. 2013).⁵ Based on *Wright and Seventh Day Adventists*, the Board is must conclude that Indiana law more closely aligns with Maryland than Alaska.

20. “The State Board acts properly when it takes a hard look at the use of certain property, especially where, as here, the property's use does not have the normal hallmarks of religious activity.” *Alte Salems Kirche, Inc. v. State Bd. of Tax Comm'rs*, 694 N.E.2d 810, 815 (Ind. Tax Ct. 1988). The Board has consistently declined to find a religious use when a property a predominantly owned, occupied, or used as a residence.

21. In *Missionaries of Divine Compassion v. Kosciusko County Assessor*, 43-032-11-2-8-00002 Ind. Bd. Tax Rev. (2013), the Board considered the residence of Sarah Masterson. Ms. Masterson testified that she was a nun in the Franciscan Missionaries of Divine Compassion, which is a Province in Formation of the Anglican Communion of North America (the Episcopal Church.) However, the residence was not owned by the church or the order. It was owned by Missionaries of Divine Compassion, Inc., a nonprofit corporation formed by Ms. Masterson and two other persons, and Ms. Masterson remained the president of the corporation. The residence was located in a neighborhood and was not advertized or otherwise outwardly distinguished as a convent or monastery. Internally, the residence had a portion dedicated for use as a chapel. Ms. Masterson was the only consistent resident. In the 5 years prior to the hearing, two novices had briefly resided with Ms. Masterson. Ms. Masterson was employed full time as a chiropractor. Ms. Masterson maintained that she had taken the vows of poverty, chastity, and obedience. However, Ms. Masterson’s portable control of the property, among other factors, led the Board to find that the primary use of the property was as a residence.

22. In *Restoration Institute Ltd. v. Hamilton County Assessor*, 29-022-11-2-8-00001 Ind. Bd. Tax Rev. (2015), Dr. Nieten, a dentist, and his wife, formed the Restoration Institute as a

⁵“ There are several basic qualities a convent must contain in order to be eligible for a tax exemption: A convent consists of a community of people who live together, follow strict religious vows, and devote themselves full-time to religious work. This definition does not expand impermissibly the scope of the property tax exemption, and it avoids an unduly narrow reading of the statute.” *Id.*

nonprofit corporation. The Restoration Institute owned the Nietens residence and operated on the premises a ministry that included a home church, religious education programs, and dental services. The residence was indistinguishable from other homes and was not open to the public or advertized with signage. The home had three dental examination rooms. The property also included an out-building used for seminars and for needy people to stay on occasion. Dental care was provided to a select group of home-educators, families, and friends, and the fees went to fund the Institute's operations. Dr. Nieten described the dental services as a ministry of dental care. The Institute conducted study clubs and presented conferences and seminars both at the residence and at public venues. The Board found that the property was primarily used as a residence and that the Institute failed to show more than isolated pockets of religious activity.

23. The Sisters of the Holy Cross have taken religious vows of poverty and obedience and must live in community. This means a member is not free to choose her residence as long as she remains in the order, as those arrangements are dictated by a superior. A member is without funds or authorization to seek independent housing. Consequently, the living arrangement itself becomes a uniquely religious obligation, and equally a burden and a benefit. The record establishes that the residents of the subject properties are members of the order and are obligated to rely on the Petitioner for shelter and sustenance. The religious necessity of the residential facilities to the order establishes that the predominant use of the properties is religious rather than residential. This is in contrast to *Missionaries of Divine Compassion* and *Restoration Institute* where the residency of the occupants was not a clearly religious obligation. Furthermore, in those cases, there was a substantial and convenient benefit to the occupants who also maintained ultimate control of the property.⁶

⁶ The Board does not question or judge the motives of the petitioners in these cases. The Board cannot become entangled in religious doctrine. The Board cannot judge between the authenticity of an Anglican nun and a Roman Catholic nun. Nor can the Board examine the authenticity of a professed religious vocation. The use of a property determines its eligibility for an exemption, and that property must be predominantly owned, occupied, and used for a religious purpose. Where the identity of the incorporator and occupant are the same, and the occupant maintains functional control of the property, it is difficult to meet the ownership requirement. The continued control of the property by the incorporator/occupant was clearly a factor in the denial of the exemption in both *Missionaries of Divine Compassion* and *Restoration Institute*.

24. An exemption depends on the predominant use of a property, not the presence or absence of normal hallmarks. The Board is not unaware that practical considerations, including costs of upkeep and an aging and diminishing membership, may require monastic orders to move away from traditional convent facilities. The Board finds the testimony implied as much. The Board, under *Wright*, must interpret the exemption statute in light of its purpose: “encouraging, fostering and protecting religious . . . institutions.” Because there is no evidence to the contrary, the Board will accept at face value the testimony that the Petitioner is shifting from traditional convents to residential facilities, and find that such is necessary for the continuation of the order.
25. Similarly, the Board is not unaware that there might be a number of reasons to forego overt displays of the use of these properties as convents. A traditional convent might run afoul of zoning rules in a residential area. Likewise, exterior signage may be restricted. Moreover, prudence might counsel that two elderly nuns living alone should not publish their vulnerability. A public expression of a religious endeavor is always relevant in evaluating a religious use, but it is not dispositive. Ideally, the Petitioner would have explained the order’s reasons for maintaining privacy, but this absence of evidence is insufficient to deny an exemption in light of the totality of the record.
26. The testimony before the Board establishes that the residences for the sisters are “necessary for the effective welfare of the exempt religious institution,” under *Wright*. The Respondent fails to present evidence to the contrary.⁷ The Board finds that the properties are 100% exempt for the years on appeal.

Summary of Final Determination

27. The evidence presented is sufficient to find that the Petitioner’s real property is entitled to a religious exemption.

⁷ The Respondent made references to the failure of the Petitioner to present an affidavit. None of the materials before the Board establish what statute required an affidavit, or why a failure to present an affidavit would be fatal to the Petitioner’s appeal. The Board will not make the Respondent’s argument for her.

Issued this day by the Indiana Board of Tax Review: November 16, 2015

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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- 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 of 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>>.