

**STATE OF INDIANA
Board of Tax Review**

SPRING VALE CEMETERY)	On Appeal from the Tippecanoe County
)	Property Tax Assessment Board of Appeals
)	
Petitioner,)	Petitions for Review of Exemption, Form 132
)	
v.)	Petition Nos. 79-003-00-2-8-00001
)	79-003-00-2-8-00003
TIPPECANOE COUNTY PROPERTY)	79-003-01-2-8-00002
TAX ASSESSMENT BOARD OF)	79-003-01-2-8-00004
APPEALS)	
)	Parcel Nos. 006-00178-2006
Respondent.)	106-06300-0065

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State, having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether property owned by Spring Vale Cemetery (Spring Vale) should be exempt from property taxes.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. The Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA) denied Spring Vale's exemption on October 16, 2001, and gave Spring Vale proper notice of denial. The PTABOA determined that Spring Vale's property is 100% taxable.

3. Pursuant to Ind. Code § 6-1.1-11-7, Spring Vale filed a petition, deemed to be a Petition for Review of Exemption (Form 132), seeking a review of the PTABOA action by the State. The petition was filed on November 5, 2001.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held before administrative law judge Joseph Stanford on April 30, 2002. Testimony and exhibits were received into evidence. John Sorensen (Board member), Dennis Overly (Board President), James E. Ramsey (Treasurer), and Robert W. Gross (Board Vice-Chair) represented Spring Vale. Red Strange (PTABOA member), Lawrence J. Lahrman (PTABOA member), and Bob McKee (County Assessor) represented the PTABOA.

5. At the hearing, the subject petition and related attachments were made part of the record and labeled Board Ex. A. The Notice of Hearing on Petition was labeled Board Ex. B. In addition, the following items were received into evidence:
Petitioner's Ex. 1 – Articles of Association and By-Laws.
Petitioner's Ex. 2 – Letter from Internal Revenue Service.

6. Spring Vale is located in Lafayette, Indiana (Fairfield Township, Tippecanoe County). The administrative law judge did not view the property.

7. Due to the death of Spring Vale's former superintendent, an exemption application did not get filed until February 13, 2001. The new person didn't do the job and may have discarded mail, so Spring Vale cannot determine if it received a Notice of Lapse of Exemption from the County Auditor. *Sorensen testimony.*
8. The PTABOA agrees that Spring Vale qualifies for exemption, but didn't know if it could grant the exemption because of the late-filed application. The PTABOA has no knowledge or evidence that a Notice of Lapse of Exemption was sent to Spring Vale by the County Auditor. *Strange, Lahrman, and McKee testimony.*

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the PTABOA pursuant to Ind. Code § 6-1.1-15-3.

A. Burden

2. In reviewing the actions of the County Board (or PTABOA), the State is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816,820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail.
3. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

4. To meet his burden, the taxpayer must present probative evidence in order to make a prima facia case. In order to establish a prima facia case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230,1233 (Ind. Tax 1998); *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

B. Constitutional and Statutory Basis for Exemption

5. 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.
6. Article 10, Section 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, USAC seeks exemption 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 scientific purposes. Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt from property taxation if it were a building. Ind. Code § 6-1.1-10-16(e).
7. 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 Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996) (501(c)(3) 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.

C. Basis of Exemption and Burden

8. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
9. 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).
10. 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 v. State Board of Tax Commissioners* (NAME), 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.
11. 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)).
12. 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).

13. 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.” *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 1247 (Ind. 1991)).

D. Conclusions concerning the exemption claim

14. Ind. Code § 6-1.1-11-3 requires the owner of tangible property who wishes to obtain an exemption from property taxation to file an application with the county auditor on or before May 15 of the year that the exemption is claimed.
15. Pursuant to Ind. Code § 6-1.1-11-5, the auditor of a county shall send a Notice of Lapse of Exemption to the owner of property if the owner has not applied for a tax exemption for that year, a tax exemption was in effect for the immediately preceding year, and the owner is required to file an application for that year. This notice shall be mailed by June 15 of the year in which the exemption application should have been filed.
16. According to Ind. Code § 6-1.1-11-5(c), a county auditor’s failure to give the notice required does not automatically continue an exemption unless an application is subsequently filed by the owner and approved by the PTABOA on or before the first Monday in November of the year following the year in which the application should have been filed.
17. In the case at bar, Spring Vale failed to file an application for exemption in 2000. The property was exempt in 1999, the immediately preceding year. Spring Vale was required to file for exemption in 2000.
18. As a result, the County Auditor was required to send Notice of Lapse of Exemption to Spring Vale on or before June 15, 2000. Spring Vale does not

recall receiving this notice. The PTABOA has no knowledge or evidence that this notice was sent. No testimony or other evidence was presented to indicate that the required Notice of Lapse of Exemption was sent to Spring Vale.

19. In order for Spring Vale to continue the exemption, an application had to be filed and approved by the PTABOA before the first Monday in November 2001. The application for exemption was filed by Spring Vale on February 13, 2001. While the PTABOA initially denied the exemption on October 16, 2001, it only did so because it wasn't aware that Ind. Code § 6-1.1-11-5(c) allowed for the approval of the exemption in specific situations. The PTABOA agrees that Spring Vale qualifies for exemption, and, in fact, wants Spring Vale to have the exemption.
20. Therefore, based on the PTABOA's testimony at this hearing, it is determined that both parcels are 100% exempt from property taxation for 2000 and 2001.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review