

REPRESENTATIVES FOR PETITIONER: Cynthia Rensberger, Sponsor for St. Germain Foundation, Inc.

REPRESENTATIVES FOR RESPONDENT: Ross A. Portolese, St. Joseph County PTABOA

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ST. GERMAIN FOUNDATION, INC.,)	
)	Petition No: 71-026-02-2-8-00001
Petitioner)	County: St. Joseph
)	
v.)	Township: Portage
)	
)	Parcel No.: 18-1054-2286
)	
ST. JOSEPH COUNTY)	
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS,)	
)	
Respondent)	Assessment Year: 2002
)	

Appeal from the Final Determination of
St. Joseph County Property Tax Assessment Board of Appeals

October 2, 2003

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 Petitioner was required to provide a Certificate of Authorization to obtain property tax exemption.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-3, St. Germain Foundation, Inc. (Petitioner) filed an application for property tax exemption with the St. Joseph County Auditor on May 6, 2002. On November 4, 2002, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) denied the Petitioner's application.
3. Pursuant to Ind. Code § 6-1.1-11-7, the Foundation filed a Form 132 petition petitioning the Board to conduct an administrative hearing. The Form 132 petition was filed November 27, 2002.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on April 17, 2003 in South Bend, Indiana before Ellen Yuhan, the duly designated administrative law judge.
5. The following persons were present at the hearing:

For the Petitioner:

Cynthia Rensberger, Sponsor for the St. Germain Foundation

For the Respondent:

Ross A. Portolese, St. Joseph County PTABOA
Rosemary Mandrici, St. Joseph County PTABOA

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

For the Petitioner:

Cynthia Rensberger, Sponsor for St. Germain Foundation

For the Respondent:

Ross A. Portolese, St. Joseph County PTABOA

7. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – Articles of Incorporation with amendments

Petitioner's Exhibit 2 – By-laws

Petitioner's Exhibit 3 – Financial Statements

For the Respondent:

Respondent's Exhibit 1 – Certificate of Authorization

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board exhibits:

Board Exhibit A – The Form 132 with attachments

Board Exhibit B – Notice of Hearing

9. The subject property consists of a building and land located at 626 Portage Avenue, South Bend in the township of Portage and the county of St. Joseph. The assessment year for which exemption is sought is 2002 with property taxes due and payable in 2003. The assessed value is:

Land: \$2,910 Improvements: \$16,500.

10. The St. Joseph County PTABOA determined the property to be 100% taxable.

11. The Hearing Officer did not view the property.

Jurisdictional Framework

12. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
13. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

Indiana's Property Tax System

14. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

State Review and Petitioner's Burden

15. The State does not undertake to reassess property, or 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).
16. 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 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]

17. 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.]
18. 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.]
19. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm’rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
20. The State will not change the determination of the County PTABOA 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.]

Property Tax Exemption

21. Generally, all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

22. Article 10, § 1 of the Indiana Constitution reads:

(a) The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property real and personal. The General Assembly may exempt from property taxation any property in the following classes:

(1) Property being used for municipal, educational, literary, scientific, religious, or charitable purposes.

23. Article 10, § 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption.

24. The justification for tax exemption is the public benefit. *State Board of Tax Commissioners v. Wright* (1966), 139 Ind. App. 370, 215 N. E. 2d 57. The purpose of tax exemption, whether for religious or other classification, is to insure that the property and funds devoted to one public benefit are not diminished by being diverted through taxation for another public benefit. *Id.*

25. The grant of tax exemption releases property from the obligation of bearing its share of the cost of government and disturbs the equality and distribution of the common burden of government upon all property. *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 280 (Ind. Tax 1989), *aff'd.*, 571 N.E. 2d 1247 (Ind. 1991). The grant of tax exemption shifts the tax burden to others or results in the loss of tax revenue. *NAME*, 671 N.E. 2d at 220.

26. Accordingly, exemptions are strictly construed against the organization seeking exemption and in favor of taxation. *Id.* at 220; *Indiana Association of Seventh-Day*

Adventists v. State Board of Tax Commissioners, 512 N.E. 2d 936, 938, (Ind. Tax 1987).

A taxpayer seeking exemption bears the burden of proving that it is entitled to exemption. *NAME*, 671 N.E. 2d at 220 (citing *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 611 N.E. 2d 708, 714 (Ind. Tax 1993)). As a condition precedent to being granted an exemption for charitable or educational purposes, the taxpayer must demonstrate that it provides "a present benefit to the general public...sufficient to justify the loss of tax revenue." *St. Mary's Medical Center*, 534 N.E. 2d at 279.

27. In determining whether the property qualifies for exemption, the predominant and primary use of the property controls. *NAME*, 671 N.E. 2d at 220, (citing *Fort Wayne Sports Club*, 258 N.E. 2d at 881 and *Indianapolis Elks Buildings Corp. v. State Board of Tax Commissioners*, 251 N.E. 2d 673, 679 (Ind. App. 1969)).
28. The use of the property for exempt purpose is the minimum requirement for exemption. The General Assembly may add other requirements when enacting exemption statutes. *Sangralea Boys Fund, Ind. v. State Board of Tax Commissioners*, 686 N.E. 2d 954, n. 2 (Ind. Tax 1997).

Discussion of Issue

Whether the Petitioner was required to provide a Certificate of Authorization to obtain property tax exemption.

29. The Petitioner contends that the subject property should be exempt from property taxes for charitable and religious purposes.

30. The applicable statutes governing this Issue are:

Ind. Code § 6-1.1-10-16

Property owned, used, and occupied by a person for religious purposes is exempt from property taxation.

Ind. Code § 6-1.1-1-10

"Person" is defined as a sole proprietorship, partnership, association, corporation, limited liability company, fiduciary, or individual.

Ind. Code § 6-1.1-11-3(c)

An application for exemption shall contain a description of the property; a statement of ownership, possession, and use of the property; grounds for exemption; name and address of the applicant; and, any information required by the Department of Local Government Finance (DLGF).

Ind. Code § 6-1.1-11-1

Property tax exemption is a privilege that may be waived if the owner does not comply with the statutory procedures for obtaining exemption.

31. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The Foundation is a not-for-profit corporation organized in the State of Illinois. (Pet. Ex. 1)
 - B. The Foundation timely filed the Form 136, Application for Property Tax Exemption on May 6, 2002 with copies of the articles of incorporation, the by-laws, and financial statements. (Resp. Testimony.)
 - C. The PTABOA agrees the Petitioner qualifies for property tax exemption. The PTABOA denied the exemption application because the Petitioner, an Illinois corporation, failed to present a Certificate of Authorization to conduct business in Indiana. (Resp. Testimony.)
 - D. The Form 136, Application for Exemption. (Board Ex. A)

Analysis of the Issue

32. The Petitioner claims that the property should be exempt because the property is used solely for religious purposes.
33. The PTABOA asserts that property tax exemption would have been granted had the Petitioner provided a Certificate of Authorization giving the Petitioner authorization to conduct business in Indiana.

34. The Petitioner's religious purposes and the religious purposes of the ownership, use, occupancy of the property is not in dispute. The Respondent concedes that, because the property is owned, used, and occupied for the Petitioner's religious purposes, the property satisfies the requirements for property tax exemption under Ind. Code § 6-1.1-10-16. The point of contention focuses on whether the Petitioner was required to provide documentation showing it was authorized to conduct business in Indiana before property tax exemption could be granted. Failure to provide certain information could lead to the loss of exemption under one of two grounds – the lack of information caused the application to be noncompliant or the lack of information hindered the analysis of the exemption request. The Board will first examine the question of whether the application for exemption was statutorily compliant and then the Board will examine whether the analysis of the exemption application was hindered by the lack of the Certificate of Authorization.

Was the application for exemption statutorily noncompliant?

35. An incomplete application is sufficient grounds for the denial of an exemption application. Ind. Code § 6-1.1-11-1. A complete application includes any documentation required by the DLGF. Ind. Code § 6-1.1-11-3(b). The Form 136 Application for Exemption gives notice to the property owner that failure to provide the required documentation may be grounds for denial. (Board Ex. A.)
36. The DLGF notifies the property owner of the documentation required by way of the Form 136, Application for Exemption. (Board Ex. A.) The documents required by the DLGF are the articles of incorporation, the bylaws, balance sheets, and summaries of income and expenditures. There is no mention of documentation showing authorization to conduct business in Indiana as part of documentation required by the DLGF.
37. The evidence and testimony clearly establish that the Petitioner properly filed an application for exemption, which included copies of the articles of incorporation, the bylaws, and financial statements as required by the DLGF. The Petitioner has presented

a prima facie case that the application filed meets the statutory requirements as a complete application.

Did the failure to provide the Certificate of Authorization hinder the analysis of the exemption application?

38. In statutory construction, it is just as important to recognize what the statute does not say as it is to recognize what it does say. *Irwin Mortgage Corporation v. Indiana Board of Tax Review*, 775 N.E.2d 720, 723 (Ind. Tax, 2002) citing *City of Evansville v. Zirkelbach*, 662 N.E.2d 651, 654 (Ind. Ct. App. 1996), *trans. denied*. The statutes relevant to property tax exemption under Section 16 of Chapter 10 and Chapter 11 do not specify that a corporation must be an Indiana corporation or a corporation authorized to conduct business in Indiana in order to obtain property tax exemption. Because the relevant statutes make no distinction between Indiana corporations and out of state corporations, it is logical to conclude that the General Assembly did not intend to limit the availability of exemption to corporations formed in Indiana or corporations authorized to do business in Indiana.
39. The fact that the Petitioner failed to present a Certificate of Authorization has little or no affect on the outcome of an exemption application. The Certificate of Authorization is not a document required by the DLGF as part of the exemption application. Thus, the absence of this document could not cause the Petitioner's application to be incomplete nor cause the Petitioner to waive the exemption. Also, the fact that the Petitioner is not an Indiana corporation or was not authorized to conduct business in Indiana at the time of application has no weight in this matter because the Petitioner's corporate status is not relevant to the analysis of the Petitioner's exemption request.
40. The Respondent presented a Certificate of Authorization for the Petitioner dated March 26, 2003. This evidence is not sufficient evidence to rebut the Petitioner's prima facia case.

Summary of Final Determination

Determination of ISSUE: *Whether the Petitioner was required to provide a Certificate of Authorization to obtain property tax exemption.*

41. The Petitioner has prevailed by a preponderance of the evidence that it properly filed a complete and compliant application for exemption. Thus, the property owned, used, and occupied by the Petitioner for religious purposes is 100% exempt from taxation.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, 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.