

REPRESENTATIVES FOR PETITIONER: Malcolm Winiger, President of St. Phillips Conservation Club; John Eickhoff, Club Member

REPRESENTATIVES FOR RESPONDENT: Rita Sherretz, Posey County Assessor, William Butler and Donald Oeth, Members of the Posey County PTABOA, Gerald Nurrenbern, Marris Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ST. PHILLIPS CONSERVATION CLUB)	Petition No.: 65-008-02-2-8-00002
)	
Petitioner)	County: Posey
)	
v.)	Township: Marris
)	
)	Parcel No.: 0080251501
)	
POSEY COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS)	
)	
Respondent)	Assessment Year: 2002
)	

Appeal from the Final Determination of
[Posey County Property Tax Assessment Board of Appeals]

June 10, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The 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 property qualifies for exemption under Ind. Code § 6-1.1-10-16 for educational or charitable purposes.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Malcolm Winiger, President of St. Phillips Conservation Club filed a Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on September 20, 2002. The determination of the Posey County Property Tax Assessment Board of Appeals (PTABOA) was issued on August 21, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 12, 2003 in Mt. Vernon, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Malcolm Winiger – President, St. Phillips Conservation Club

John Eickhoff – Member, St. Phillips Conservation Club

For the Respondent:

Rita Sherretz - Posey County Assessor
William Butler – Member Posey County PTABOA
Donald Oeth - Member Posey County PTABOA
Gerald Nurrenbern - Marrs Township Assessor

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

For the Petitioner:

Malcolm Winiger – President, St. Phillips Conservation Club
John Eickhoff – Member, St. Phillips Conservation Club

For the Respondent:

Rita Sherretz - Posey County Assessor
William Butler- Member, Posey County PTABOA
Donald Oeth – Member, Posey County PTABOA.

6. The following exhibits were presented:

For the Petitioner:

Petitioner’s Exhibit A – Grounds for Appeal
Petitioner’s Exhibit B - Constitution and By-Laws of the St.
Phillips Conservation Club.
Petitioner’s Exhibit C – Income and Expenses of St. Phillips
Conservation Club for 2000 and 2001.
Petitioner’s Exhibit D – A brief history of St. Phillips
Conservation Club.

For the Respondent:

Respondent’s Exhibit A – The property record card for St.
Phillips Conservation Club.
Respondent’s Exhibit B – Copy of the plat for St. Phillips Conservation
Club property.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
- [A] Copy of the Form 132
 - [B] Notice of Hearing dated 1/28/03.
 - [C] The Request for Additional Evidence dated 3/12/03.
 - [D] The letter granting an extension of time to 3/31/03 to provide a copy of the 2002 Federal and Indiana tax returns.
8. At the hearing, additional evidence was requested and the following was received in a timely manner.
- The following items are listed as Petitioner's Exhibits:
- Petitioner's Exhibit E – St. Phillips Conservation Club 2002
Financial Statement.
 - Petitioner's Exhibit F – The Schedule of Events for St. Phillips
Conservation Club – 2002.
9. On March 19, 2003, Mr. Winiger requested an extension of time until March 31, 2003, to provide other requested information. The extension was granted in writing; a copy of the letter is enclosed in the appeal documentation. The extension of time was granted to Mr. Winiger in order to have St. Phillip's Conservation Club's tax returns completed and sent to the administrative law judge. The completed tax returns were not submitted and the final determination has been made without this evidence.

Jurisdictional Framework

10. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

State Review and Petitioner's Burden

11. 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).
12. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. 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.]
13. 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.]
14. 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.]
15. 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.' 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

16. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.
17. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
18. 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.

Basis of Exemption and Burden

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

21. 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.
22. 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)).
23. 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).
24. 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 (Ind. Tax 1991)).

Discussion of Issue

ISSUE: Whether the property qualifies for exemption under Ind. Code § 6-1.1-10-16 for educational or charitable purposes.

25. The Petitioner contends that all of the subject property should be 100% exempt from property taxation because of the educational and charitable nature of some of the activities at the St. Phillip's location.
26. The Respondent contends that conservation clubs are not specifically listed in the exemption statutes. The Respondent believes that the activities held at the club should take the place of and/or enhance activities that would normally be provided by the government and benefit the general public. Further, the Respondent does not believe that the services provided to the community are charitable and educational under the guidelines of the Indiana exemption statutes.
27. The applicable rules and case law governing this Issue are:

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 6-1.1-10-36.3

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.

28. Evidence and testimony considered particularly relevant to this determination include the following:
- (a) The property was established for the purpose of promoting hunting, fishing, and wildlife preservation. *Winiger Testimony*.
 - (b) According to the Indiana Business Entity Report provided by the Petitioner, the club is an Indiana, non-profit corporation. *Petitioner’s Exhibit A attached to the Form 132, Board Exhibit A*.
 - (c) The club is funded by: membership dues, fund raising events held throughout the year, and rental of the building to other entities. *Petitioner’s Exhibit E*.
 - (d) The property was tax exempt several years ago, but was placed on the tax rolls at some later date and taxes have been paid since. No one filed an appeal until the current time. *Winiger Testimony*.
 - (e) In addition to the club members, the property is used by the following entities:

- (1) Boy Scouts and Eagle Scouts for camping and other projects.
- (2) Students from Posey County schools for retreats, science classes, and nature exploration.
- (3) Hunter Safety Programs sponsored by the Indiana Department of Natural Resources.
- (4) Local volunteer fire departments for fund raising events.
- (5) National Turkey Federation and Ducks Unlimited.

Winigar Testimony and Petitioner's Exhibit A.

- (f) The club provides scholarships for young people to attend the Indiana Department of Natural Resources summer camp. *Winigar Testimony and Petitioner's Exhibit A.*
- (g) The club donates funds to the Indiana Department of Natural Resources for additional equipment. *Winigar Testimony and Petitioner's Exhibit A.*
- (h) The LaGrange County conservation club is exempt from taxes and Mr. Jack Dold, 1st Vice President of the Indiana Wildlife Federation and an officer of the Pretty Lake Conservation Club of LaGrange, told Mr. Winiger that he is not aware of any conservation club in the state which is not exempt from property taxation. *Winigar Testimony and Petitioner's Exhibit A.*
- (i) All of the conservation clubs in Posey County are not exempt. *Sherretz Testimony.*
- (j) In a bulletin provided by the State Tax Board, 92-43, the activity of an exempt entity must benefit the general public and fulfill the needs that might otherwise be dealt with by the government. *Sherretz Testimony.*
- (k) Predominant use of the property prevails. *Sherretz Testimony.*
- (l) The County takes their position seriously and does not account for the tax-exempt status of the past. *Butler Testimony.*

Analysis of ISSUE

29. The Petitioner stated that the subject property should be exempt for charitable or educational purposes.

Educational Purpose

30. 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 Sports Club*, 147 Ind. App. at 140, 258 N.E. 2d at 882).
31. “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).
32. 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 America, 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).
33. Accordingly, the Petitioner 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 makes a substantial contribution to the relief of the burden of government.
34. The Petitioner did not offer probative evidence that they relieve the State of any of its educational burden. The Petitioner has failed to demonstrate that their educational activities and curriculum confer a benefit to the general public. In the current situation, the Petitioner allows the DNR to sponsor a Hunter Safety Course, Boy Scouts to camp and explore, and schools to have field trips. The activities provided at the club are more of a recreational and social benefit.

35. To meet its burden, the Petitioner would have needed to demonstrate how its activities educate the public on subjects of instruction furnished by tax supported schools.
36. For all of the above reasons, the State finds that the Petitioner is not entitled to the educational purpose claim.

Charitable Purpose

37. The Petitioner has also claimed exemption under Indiana Code § 6-1.1-10-16 for charitable purposes. Pursuant to this section, property is exempt from taxation “if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.”
38. Indiana courts broadly construe the term “charitable” as the relief of human want and suffering in a manner different from the everyday purposes and activities of man in general. *NAME*, 671 N.E. 2d at 221 (quoting *Indianapolis Elks Bldg. Corp. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 540, 251 N.E. 2d 673, 683 (Ind. App. 1969)).
39. “Charity” is not defined by statute, and the Tax Court looked to *Black’s Law Dictionary* to find the plain, ordinary, and usual meaning of “charity”; namely:
a gift for, or institution engaged in, public benevolent purposes. [It is a]n attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.
Raintree Friends, 667 N.E. 2d at 813-14 (quoting *Black’s Law Dictionary*, 213 (5th ed. 1979)).

40. Plainly, “charity” is not confined to relief for the destitute. It may be limited to one sex, church, city, or confraternity. *City of Indianapolis v. The Grand Master, etc. of the Grand Lodge of Indiana*, 25 Ind. 518, 522-23 (1865).
41. The Petitioner exists for the benefit of its members. Relief of human want constituting charity may be confined to an organization’s membership, though it must be manifested by obviously charitable acts different from everyday purposes and activities of man in general. *Indianapolis Elks Bldg. Corp. v. State Bd. Of Tax Commissioners*, 251 N.E.2d 673, 145 Ind. App. 522 (Ind. Ct. App. 1969) Thus, in considering the Petitioner’s charitable purpose claim, the question arises as to whether the Petitioner provides relief of human want by obviously charitable acts different from the everyday purposes and activities of man in general.
42. To meet its burden, the Petitioner would have needed to demonstrate how that the activities are charitable.
43. The Petitioner has failed to demonstrate that it is entitled to an exemption for charitable purposes.

Predominate Use

44. A “predominate use” test was adopted for determining whether property qualifies for exemption under Ind. Code Chapter 6-1.1-10. “Although charitable giving might serve as evidence to support claimed charitable use of the facility, the statutory test since 1983 has been predominate use of the facility, not distribution of income for charitable purposes.” *State Board of Tax Commissioners v. New Castle Lodge # 147*, 765 N.E. 2d 1257, 1263 (Ind. 2002).
45. Pursuant to Ind. Code § 6-1.1-10-36.3, property is predominantly used or occupied for one or more stated purposes if it is used or occupied for one 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. Property that is predominately used or occupied for purposes other than one of the stated purposes is not exempt from any part of the property tax.

46. The Petitioner has merely provided a Schedule of Events for 2002 (*Petitioner's Exhibit F*) to document usage. The schedule is not detailed and reveals only a few dates (6 to 10 for the entire year) involving Boy Scouts, the Department of Natural Resources, school activities, and other activities that might be presumed as charitable.
47. It cannot be concluded from such information that the property was used predominately for educational or charitable purposes.
48. The Petitioner did not adequately demonstrate that the property was predominately used or occupied for educational or charitable purposes as required by Ind. Code § 6-1.1-10-36.3.

Summary of Final Determination

Determination of ISSUE: *Whether the property qualifies for exemption under Ind. Code § 6-1.1-10-16 for educational or charitable purposes.*

49. The Petitioner has failed to prove that the property is entitled to an exemption for educational or charitable purposes. The Petitioner has also failed to show that the predominate use of the property is for a tax exempt purpose. The property remains 100% taxable.

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.