

REPRESENTATIVE FOR PETITIONER:
James K. Gilday, Gilday, Donahoe & Irvin, P.C.

REPRESENTATIVE FOR RESPONDENT:
John R. Scott, Porter County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Steelworkers Hall, Inc.)	Petition No.: 64-016-06-2-8-00113
)	
Petitioner,)	Parcel No.: 08-090001931
)	
v.)	
)	
Porter County Property)	County: Porter
Tax Assessment Board of)	
Appeals)	Township: Portage
)	
Respondent.)	Assessment Year: 2006

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

May 8, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

1. The issue presented for consideration by the Board is whether the subject property should be granted an exemption under Ind. Code § 6-1.1-10-16 because the property is predominately used for educational and charitable purposes.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

2. On June 5, 2006, 6787 Steelworkers Hall, Inc., (the Steelworkers Hall) filed an Application for Property Tax Exemption (Form 136) for real and personal property for the 2006 assessment year.² The Porter County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on December 28, 2006, denying the request for exemption on the new construction and finding it to be 100% taxable. On January 29, 2007, pursuant to Ind. Code § 6-1.1-11-7, the Steelworkers Hall filed a Petition to the Indiana Board of Tax Review for Review of Exemption (Form 132) requesting the Board conduct an administrative review of the property's 2006 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on February 17, 2009, in Valparaiso, Indiana.
4. The following persons were sworn as witnesses:

¹ The Petitioner's application and the petition to the Board requested an exemption for educational purposes only.

² It appears that the Petitioner did not timely file the Application for Tax Exemption. Pursuant to Ind. Code 6-1.1-11-3, "...an owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the county assessor of the county in which the property that is the subject of the exemption is located. The application must be filed annually before May 15 on forms prescribed by the department of local government finance." Because the Respondent, however, did not raise this issue at the hearing, the Board will address the merits of the Petitioner's case.

For the Petitioner:

Allen D. Long, Financial Secretary, Steelworkers Hall, Inc.

For the Respondent:

John R. Scott, Porter County Assessor
Cathy Meyer, Deputy Assessor, Exemptions
Susanne Villareal, PTABOA clerical
Peggy Hendron, PTABOA clerical
Barb Wiggins, PTABOA member

5. The Petitioner submitted the following exhibits:

Petitioner Exhibit 1 – Form 132 Petition for Review of Exemption,
Petitioner Exhibit 2 – Copy of 52 IAC 2-7-1,
Petitioner Exhibit 3 – Notice of Hearing,
Petitioner Exhibit 4 – Order Regarding Conduct of Exemption Hearing,
Petitioner Exhibit 5 – Letter from John Scott, Porter County Assessor to
Jane Chrisman,
Petitioner Exhibit 6 – Certificate of Incorporation from the State of
Indiana and the Articles of Incorporation,
Petitioner Exhibit 7 – Business entity information showing 6787
Steelworkers Hall as a non-profit domestic
corporation,
Petitioner Exhibit 8 – By-laws of Local Union 6787,
Petitioner Exhibit 9 – Property record card,
Petitioner Exhibit 10 – Floor plan of the banquet hall and union hall,
Petitioner Exhibit 11 – List of the 2005 Duneland Falls Local Union
Activity,
Petitioner Exhibit 12 – Calculation of Exempt Use of Duneland Falls
Banquet Facility,
Petitioner Exhibit 13 – Affidavit of Jerome Davison,
Petitioner Exhibit 14 – Affidavit of Chef Terry Zych,
Petitioner Exhibit 15 – Ind. Code 6-1.1-10-36-3,
Petitioner Exhibit 16 – Ind. Code 6-1.1-10-16.

6. The Respondent submitted the following exhibits:

Respondent Exhibit 1 – Board Determination in *International Union of
Operating Engineers, Local 150, Building
Corporation v. Lake County Property Tax
Assessment Board of Appeals*, Petition No. 45-
030-00-2-8-00005, *et seq.*, October 9, 2007,
Respondent Exhibit 2 – Photographs of United Steelworkers of America
Local Union 6787,

- Respondent Exhibit 3 – Copy of Form 120, Section IV, Determination by the County PTABOA for 2006,
- Respondent Exhibit 4 – Copy of an electronic mail message from Barb Wiggins, PTABOA member to Lindy Wilson, former PTABOA clerical 2006,
- Respondent Exhibit 5 – Advertising article for Duneland Falls Banquet & Meeting Center dated August 22, 2006,
- Respondent Exhibit 6 – Advertising articles for Duneland Falls Banquet & Meeting Center dated February 6, 2009.

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

- Board Exhibit A – The 132 Petitions,
- Board Exhibit B – Notice of Hearing dated December 2, 2008,
- Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
- Board Exhibit D – Hearing sign-in sheet.

8. The subject property consists of a union hall and the Duneland Falls banquet facility located at 1100 Max Mochal Highway in Chesterton, IN.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2006, the Porter County PTABOA determined the union hall to be 100% exempt and the Duneland Falls banquet facility to be 100% taxable.

11. The Petitioner contends the union hall is 100% exempt and the banquet hall should be granted an 86.11% exemption.

OBJECTIONS

12. At the start of the hearing, the Petitioner objected to the Respondent's exhibits and any testimony that might be offered. *Gilday argument*. Specifically, the Petitioner argued that the Respondent did not provide the list of exhibits and witnesses or the actual exhibits and summary of witness testimony in accordance with the Board's procedural rules and the Board's Order Regarding Conduct of

Exemption Hearing. *Id.*; *Petitioner Exhibits 2 and 4*. The Respondent faxed a letter on February 10, 2009, listing the witnesses and stating that all documentary evidence would be given to the opposing party at the time of the hearing. *Gilday argument*; *Petitioner Exhibit 5*. The Respondent did, in fact, submit the exhibits to the Petitioner at the beginning of the hearing.

13. The Respondent argued that he followed the hearing preparation checklist, which states, “I have made a complete set of all documentary evidence and have either given it to the opposing party or will have it to give to them at the time of the hearing.” *Villareal testimony*. This hearing checklist, however, is for small claims hearings. This is not a small claims hearing. Here, the hearing notice states, “At least 15 business days before the hearing date, the parties must exchange a list of witnesses and exhibits. At least 5 business days before the hearing date, the parties must exchange evidence and summaries of witness testimony to be presented at the hearing.” *Board Exhibit B*. The Board also informed the parties in the Order Regarding Conduct of Exemption Hearing that, “The parties and counsel are expected to abide by all procedural rules issued by the Board, including the exchange of exhibit and witness lists and the exchange of actual exhibits. *See* 52 IAC 2-7-1.”
14. The Board’s procedural rules are clear. Parties must exchange a list of witnesses and exhibits at least 15 business days before the hearing date and documentary evidence must be exchanged at least 5 business days before the hearing. 52 IAC 2-7-1(b). This the Respondent failed to do. The Board therefore sustains the Petitioner’s objection to Respondent’s exhibits.

JURISDICTIONAL FRAMEWORK

15. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination

by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

16. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
17. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
18. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

BASIS OF EXEMPTION AND BURDEN

20. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation.

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

21. 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. *See Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status does not automatically entitle a taxpayer to tax exemption).
22. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. These government services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. See generally, *Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E. 2d 218 (Ind. Tax Ct.1996).
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 statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Bd. of Tax Comm'rs*, 611 N.E. 2d at 714 (Ind.Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E. 2d 936, 938 (Ind. Tax Ct.1987).

PETITIONER'S CONTENTIONS

25. The Petitioner contends the property should be exempt under Ind. Code § 6-1.1-10-16 as an educational and charitable organization.

26. The Petitioner presented the following evidence in regard to this issue:
- A. The Petitioner contends it is a not-for-profit, federal tax-exempt organization under IRS 501(c)(5) and it is certified as a non-profit domestic corporation in the State of Indiana. *Long testimony; Petitioner Exhibits 6 and 7.* According to the Petitioner’s by-laws, its purpose is “to establish through collective bargaining, adequate wage standards, shorter hours of work, and improvements in the conditions of employment for workers in industry and to engage in educational, legislative, political, civic, social, welfare, community and other activities.” *Long testimony; Petitioner Exhibit 8.* The Petitioner contends that its collective bargaining goals, as well as the other objectives of the union, are designed to provide relief from human want for the members of the Steelworkers Hall. *Long testimony.* The Petitioner claims that, as part of that relief from human want, the union provides an educational benefit to its members and operates a food bank and provides counseling for employees that have been laid off. *Id.*
- B. The Petitioner’s witness, Mr. Long, testified that the property is a single parcel with a union hall and a recently constructed banquet hall. *Long testimony.* According to the Petitioner, the original union hall has been exempt from real estate taxation in prior years, as well as in 2006. *Gilday argument.* Thus, the Petitioner argues, since the steelworkers’ use of the original building is recognized as exempt for 2006 by the PTABOA, any typical or customary union usage of the banquet hall should not be questioned as having an exempt purpose. *Id.*
- C. The Petitioner further argues that the banquet facility is predominately used for the benefit of the union members and for educational and charitable purposes. *Gilday argument.* According to the Petitioner, the property is used for union meetings 35.65% of the time; Steelworkers Organization of Active

Retirees (SOAR) meetings 1.85% percent of the time; Northwest Indiana Federation of Labor (NIFL) meetings 4.17% of the time; and culinary classes held by Ivy Tech 44.44% of the time. *Long testimony; Petitioner Exhibit 12.* The Petitioner contends these exempt activities total 86.11%. *Id.* The remaining use of the facility for weddings and banquets, which total 13.89%, is not considered exempt activities. *Id.* In support of this contention, the Petitioner presented a list of the activities that took place in the banquet facility and also a chart showing the hours and the percentage of use for those activities. *Petitioner Exhibits 11 and 12.*

- D. In addition, the Petitioner contends that CPR classes are held two to five days a week. *Long testimony.* According to the Petitioner, the union also conducts safety training at the facility and the training is included in the 35.65% union use. *Id.* The Petitioner also argues that it donates the use of the hall to various charitable organizations for their events. *Long testimony.* For example, the American Heart Association and United Way have each used the hall. *Id.*
- E. Finally, the Petitioner argues that under Indiana Code § 6-1.1-10-36.3, it need only show that the property was used for exempt purposes more than 50% of the time and that the real estate is used and occupied in the year that ends on the assessment date of the property for the property to be entitled to an exemption. *Gilday argument; Petitioner Exhibit 15.*

RESPONDENT'S CONTENTIONS

27. The Respondent contends the Petitioner is not entitled to 100% exemption.
28. The Respondent presented the following in support of his contention:

- A. The Respondent argues that the Petitioner failed to supply the PTABOA with the total amount of hours used in the building and the total amount of space used. *Scott argument*.
- B. The Respondent further contends that the Petitioner moved the activities that originally took place in the union hall that the PTABOA believed were exempt to the banquet facility in order to seek an exemption for that building also. *Scott testimony*.

ANALYSIS OF THE ISSUE

- 29. The Petitioner contends that it used the banquet hall for union meetings, safety committee meetings, grievors' meetings, NIFL meetings, and SOAR meetings. *Long testimony*. The Petitioner argues that these activities, which total 41.67% of the usage of the facility, are exempt activities. *Id.* The Petitioner further contends that it used the facility for culinary classes which equals 44.44% of the facility's usage. *Id.* In support of this contention, the Steelworkers Hall submitted a list of events from December 2005 to March 1, 2006. *Petitioner Exhibit 11 and 12*.
- 30. The Petitioner's assumption that because Steelworkers Hall is a non-profit, labor organization its activities are exempt is incorrect. Mr. Gilday argued that "there is no case by any court in the State of Indiana whereby any activity of a labor union was found not to be exempt." *Gilday argument*. The Petitioner, however, offered no case "by any court in the State of Indiana" whereby activity of a labor union was found to actually be exempt. Nor has the Petitioner offered any statute to support a finding that property used for union purposes is exempt. A taxpayer seeking exemption bears the burden of proving that the property is entitled to an exemption by showing that the property falls specifically within the statutory authority for the exemption. *See e.g. Indianapolis Osteopathic Hospital*, 818 N.E.2d 1009. Here the Petitioner has not shown that the use of the property for union purposes is an exempt purpose.

31. The Petitioner argues that the purpose of the union is – at its core – charitable and educational. The evidence, however, does not support such a finding. While the union activities may have some charitable and educational aspects, the union’s main function as Mr. Long repeatedly testified is to promote the member’s interests in their employment with Arcelor Mittal Steel.
32. The Board views this case as analogous to the situation in *Department of Local Government Finance v. Roller Skating Rink Operators Associations*, 853 N.E.2d 1262 (Ind. 2006) wherein the Indiana Supreme Court held that “Education that primarily serves the private interests of an organization’s members does not warrant public subsidy. It does not meet the ‘public benefit’ test established in Indiana case law.” 853 N.E.2d at 1266. In that case, the Court held that any educational activities were incidental to the Roller Skating Rink Operators’ promotional activities. Contrasting previous cases where an educational purpose was found, the Court held “in each of these earlier cases where an educational purpose was found, the courses (general business, photography, gymnastics training, natural health courses) did not duplicate programs offered in public schools or institutions, but they were offered to the public and did not further the business objectives of the attendees. And the persons attending were not largely or exclusively affiliated with the presenter. In contrast, RSA’s offerings are for the benefit of its own members and serve their business purposes.” *Id.* See also *National Association of Miniature Enthusiasts v. State Bd. of Tax Comm’rs.*, 671 N.E.2d 218, 221 (Ind. Tax Ct. 1996) (“declaring itself a charity does not make NAME’s activities and endeavors the sort the law recognizes as charitable and therefore entitled to tax exemption.”).
33. Thus, like the educational activities alleged in *Roller Skating Rink Operators* or the charitable and educational activities claimed in *National Association of Miniature Enthusiasts*, here any charitable or educational activities are merely incidental to the union’s purpose of promoting its members’ employment interests. They are not the kind of activities that the law recognizes as exempt.

34. Moreover, if the legislature intended union activities to be exempt, it would have provided a specific exemption for that use. The Board will not read into the general exemption statute an intention to include union activities without guidance from the legislature or a determination on that matter from the Indiana Tax Court or Supreme Court.³
32. To the extent that the Petitioner claims it uses its property for educational and charitable purposes unrelated to the Petitioner's union activities, the Board finds the Petitioner failed to raise a prima facie case that its property is predominantly used for such purposes. Indiana Code § 6-1.1-10-16 states that "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." The test used to determine whether all or a portion of a subject property qualifies for an exemption is the "predominant use" test. *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002).
33. Ind. Code § 6-1.1-10-36.3(a) states that "property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) 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. Ind. Code § 6-1.1-10-36.3(c) further provides that "property that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the

³ The Petitioner repeatedly argued that the PTABOA found its union activities to be exempt as they relate to the union hall. Thus, Mr. Gilday argues, the Respondent "admitted" that union activities are exempt and that this Board should be somehow bound by that determination. While the PTABOA did, in fact, grant an exemption for the union hall, there was no such determination as it relates to the banquet hall. Further, the Board's proceedings are *de novo*. It is not bound to any evidence considered by or determination made by the PTABOA below.

property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.”

34. The Petitioner’s witness testified that Ivy Tech holds culinary classes 44.44% of the time that the hall is used. To the contrary, however, the Petitioner’s evidence shows that those classes used only a small part of the facility two nights a week and the course was only sixteen weeks long. *Petitioner Exhibit 14*. The Petitioner presented no evidence that the culinary classes occurred year round or that another class resumed as soon as the first class ended. Thus, at best, the Petitioner has shown that for three or four months out of the year, a small part of the facility is used a couple times a week for a cooking class. In addition, the Petitioner testified that CPR classes are held and safety training conducted. The Petitioner, however, did not document the amount of time used specifically for the CPR classes or the safety training. Even if we were to accept the Petitioner’s evidence that 44.44% of the total usage of the building was educational – which the evidence does not support – the Petitioner has not reached the 50% threshold required to show predominate use.

35. Similarly, the Petitioner’s witness testified that the Steelworkers Hall donated the use of the banquet hall to charitable organizations, such as the American Heart Association and United Way for their events. The Petitioner again offered no documentation to support that claim. Nor did the Petitioner provide any specific time or usage amount for those activities. A taxpayer must present more than anecdotal type information to prove that the property is entitled to an exemption. The onus is on taxpayers to produce detailed facility usage reports with supporting documentation of exempt use. *New Castle Lodge*, 756 N.E.2d 1257, 1264.

35. Finally, the Petitioner’s non-profit status does not raise a prima facie case. The fact that the Steelworkers Hall may be exempt from income taxes does not entitle

the Petitioner to a property tax exemption because an income tax exemption does not depend so much on how property is used, but on how money is spent. See *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d 810,813 (Ind. Tax Ct. 1996) (non-profit status does not automatically entitle a taxpayer to tax exemption).

36. The Petitioner failed to establish a prima facie case. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

37. The Petitioner failed to raise a prima facie case that the banquet hall is entitled to an exemption for 2006. The Board finds for the Respondent and holds that the banquet hall is 100% taxable.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at

<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.